Ontario
Ministry of
Community and
Social Services

December 1985

Front-Line Service Delivery

Under the Child and Family Services Act
Volume 1

THE CHILD AND FAMILY SERVICES ACT TRAINING HANDBOOK (MARCH 1985) HAS BEEN REVISED AND CONSOLIDATED WITH REGULATIONS INTO THE FOLLOWING VOLUMES.

VOLUME 1	**FRONT-LINE SERVICE DELIVERY**
VOLUME 2	**BOARDS AND SENIOR MANAGEMENT STAFF OF SERVICE PROVIDERS**
VOLUME 3	**CHILD PROTECTION**
VOLUME 4	**CHILD ABUSE REPORTING**
VOLUME 5	**SERVICES TO YOUNG OFFENDERS**
VOLUME 6	**ADOPTION**

FOREWORD

The Ministry of Community and Social Services is pleased to produce this revised and consolidated edition of the Child and Family Services Act Training Handbook. Consisting of six volumes (Volumes 3 and 4 being bound together), each is designed to assist service providers in the application of the new Act. The series presents the final revision of the extensive Training Handbook produced during the training program prior to proclamation.

Four of the volumes are complete in themselves and cover the whole of the topic named in the title. Two of the volumes, namely "Front-Line Service Delivery" and "Boards and Senior Management Staff of Service Providers", are more interrelated and there is overlap of subject matter so that material on a specific topic may be found in either one or both of the volumes. The reader may therefore need to consult the two volumes to obtain the complete information.

The principles of the Act are set out in both Volumes 1 and 2. The philosophy behind the Act is fundamental to comprehending the entire Act and readers of all volumes should ensure that they have a thorough understanding of these principles.

This edition is intended as an adjunct and complement to other Ministry publications and manuals that are now available or that will be available in the future. **It is important to remember that the content represents the statute, regulations and other information at the time of writing. Much work on implementation is still in progress and some parts of the Act are still to be proclaimed.**

December, 1985

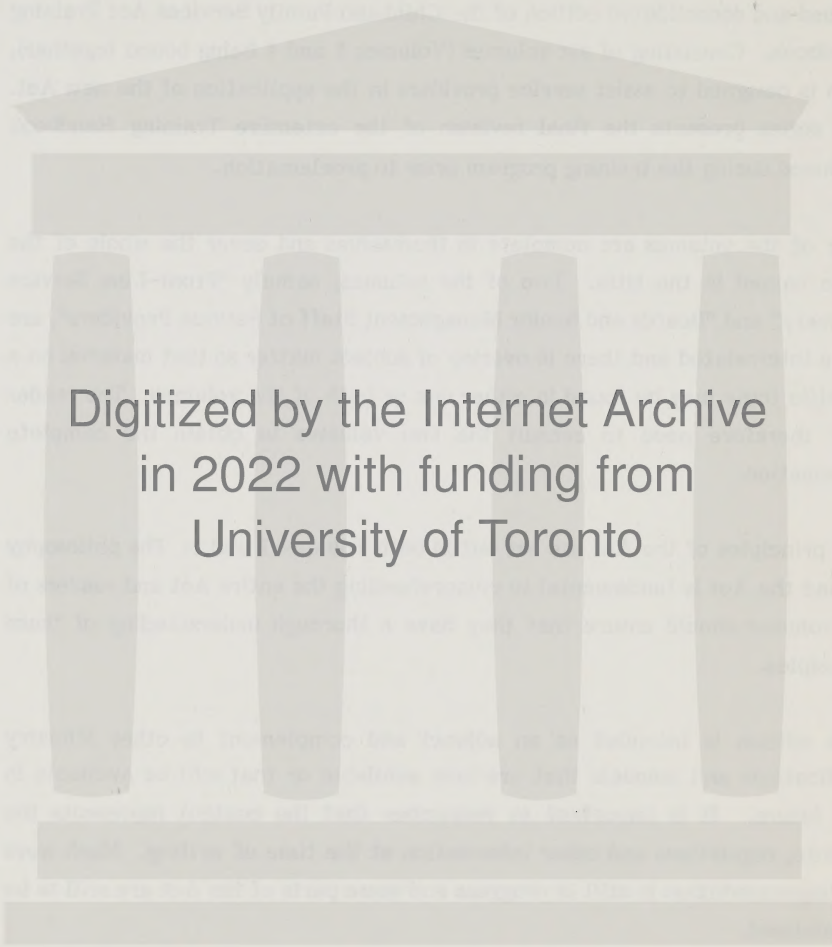

TABLE OF CONTENTS

Page

BACKGROUND AND PRINCIPLES OF THE ACT

VOLUNTARY ACCESS TO SERVICE

TABLE OF CONTENTS (Cont'd)

Page

SECURE ISOLATION

SECURE TREATMENT

TABLE OF CONTENTS (Cont'd)

TABLE OF CONTENTS (Cont'd)

Page

INTRUSIVE PROCEDURES AND PSYCHOTROPIC DRUGS UNDER PART VI

CARE OF CHILDREN IN LICENSED CHILDREN'S RESIDENCES

TABLE OF CONTENTS (Cont'd)

Page

CARE OF CHILDREN IN FOSTER HOMES

TABLE OF CONTENTS (Cont'd)

Page

CARE OF CHILDREN BY CHILDREN'S AID SOCIETIES

Page

RESIDENTIAL PLACEMENT ADVISORY COMMITTEES

DISCLOSURE OF AND ACCESS TO RECORDS UNDER THE CONTROL OF A SERVICE PROVIDER

TABLE OF CONTENTS (Cont'd)

BACKGROUND AND PRINCIPLES OF THE ACT

1. THE PROCESS OF LEGISLATIVE REFORM

The Child and Family Services Act is the culmination of a process of legislative change and consolidation of law and policy begun by the Ministry of Community and Social Services in 1977, under the aegis of its then Children's Services Division. It represents several years of public consultation with individual agencies and groups throughout Ontario who have recognized and responded to the need to reform legislation dealing with children and families. Interim legislative amendments were enacted in 1979 but these were not intended to represent long-term or comprehensive legislative reform. In October 1982 a consulation paper entitled "The Children's Act" was released by the Ministry to seek response from the community on the following broad thrusts in policy development:

- the need to bring the law governing Ministry programs into line with current social services theory and practice;

- limitations in the social service delivery system that made it difficult for a service provider to respond to the needs of individual children and families;

- the need to consolidate various pieces of legislation under which Ministry programs were mandated and to establish uniformity in their administrative processes in order to enhance efficiency within the service delivery system, and to ensure "fair treatment" of agencies providing service;

- the need to address certain "rights" issues that had been ignored altogether or too vaguely addressed by existing legislation in order to bring the law affecting Ministry programs into line with the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code;

- the need to establish, as far as practicable, and through an emphasis on openness, clarity of goals, time limits and agreements, a more equitable relationship between the person who seeks or requires service and the service provider.

Public debate and discussion with professionals and other interested groups and individuals in response to the consultation paper constituted a significant resource for the Ministry as it formulated draft legislation for introduction to the Provincial Legislature in December 1983. It was then the subject of extensive debate by the Standing Committee on Social Development, members of which are drawn from the three political parties active in the Legislature. Bill 77 was drafted, received first reading May 18, 1984 and second reading June 20, 1984. The Bill received third and final reading December 11, 1984 and Royal Assent December 14, 1984, signifying that all necessary stages of the parliamentary process had been completed. The Child and Family Services Act came into force on November 1, 1985, with the exception of the following provisions:

- Sections 34-36 inclusive, relating to residential placement advisory committees; (effective January 1, 1986)
- Sections 109-119 inclusive, dealing with secure treatment proceedings;
- Sections 124-125 inclusive, dealing with intrusive procedures;
- Section 126, dealing with psychotropic drugs;
- Section 157, dealing with adoption disclosure;
- Sections 162-174 inclusive (Part VIII), dealing with confidentiality of and access to records.

Although Part X was proclaimed November 1, 1985, the Ministry has agreed with the Indian community that implementation will take place incrementally and only after consultation. It is estimated that this period of consultation will take 6-9 months after proclamation to complete. Individual sections of Part X will be implemented as consultation is completed and only after the appropriate policies and guidelines have been issued.

At proclamation the Child and Family Services Act replaced the following statutes:

- The Child Welfare Act;
- The Young Offenders Implementation Act (which included the Training Schools Act, the Children's Probation Act and the Provincial Courts Act as it related to observation and detention homes);
- The Children's Residential Services Act;
- The Developmental Services Act, as it relates to children;

- The Charitable Institutions Act, as it relates to children;
- The Children's Mental Health Services Act;
- The Homes for Retarded Persons Act, as it relates to children;
- The Children's Institutions Act.

The only children's statute under the Ministry of Community and Social Services' mandate not encompassed by the "omnibus" Child and Family Services Act is the Day Nurseries Act.

2. THE PRINCIPLES FUNDAMENTAL TO THE CHILD AND FAMILY SERVICES ACT

The legislation attempts to strike an appropriate balance for rights of the family, rights of the child and rights of the service provider.

A cohesive philosophy for, and approach to, services to children and families and protection of children is provided by the Declaration of Principles that prefaces all other provisions of the Act. The declaration serves as an essential guide for decision-making under the Act.

The declaration itself has its roots in a Ministry publication developed in 1977 and titled "Basic Principles of Service Delivery" and in a further consultation paper published December, 1980 and titled "Children's Services Past, Present and Future".

Both documents embody as a basic approach to children's services, the best of practice and policy advocated by professionals at the front-line of service delivery.

(1) Paramount Objective of the Act — C.F.S.A. s.1(a)

The first principle and paramount objective of the Act is the promotion of the best interests, protection and well-being of children. That consideration takes precedence over any other principle in a decision affecting a particular child. This is the law's continuing acknowledgement that children are vulnerable because of their developmental immaturity and thus require protection, in certain circumstances, even from their own parents.

(2) Support of the Family **C.F.S.A. s.1(b)**

The second principle is a recognition that while parents may need help in caring for their children, the help should give support to the autonomy and integrity of the family unit rather than compete with it. Wherever possible, that service should be provided on a consensual basis.

The first aspect of this principle underscores the preference for service in the child's home, where possible, rather than care and supervision of the child away from the familiarity of his family.

Mutual consent is a prerequisite for certain provisions of service (e.g. agreements for residential care, i.e. temporary care and special needs) but it is not a necessary prerequisite to all services under the Act. There are circumstances in which service to a child must be provided over a family's objections, if the first and paramount objective of the Act is to be respected. Mutual consent is a desirable objective, and the statute recognizes that help is most effective when the child, family and service provider work together as a team to resolve difficulties that have necessitated the particular service.

This principle of voluntary service is reinforced throughout the Child and Family Services Act by specific attention to the matter of "consent", and the enhanced recognition given to voluntary service in Part II of the Act.

(3) The Least Disruptive Course of Action **C.F.S.A. s.1(c)**

The third objective of the Act is a consideration of the least restrictive or disruptive course of action that is available and appropriate in a particular case to help a child or family. This principle is reinforced throughout the Act by the preferences for service within the child's home as an alternative to removal of the child, the preference for community living as an alternative to institutional living, and the preference for open facilities as opposed to ones that are locked.

The principle is underscored further by direction to service providers and to the courts to choose from among the resources available the least restrictive alternative that is available and appropriate for the child. This direction reflects the general goal of keeping service provision as close to the child's home or community as possible, in as normal a setting as possible, and in the least restrictive manner that is consistent with the safety of the child and others. This principle also reflects the law's continuing acknowledgement that there are no perfect solutions when a parent's care must be supplemented or replaced, only alternatives to ensure that the child's needs and the needs of the family are met during the time that services are required.

(4) Continuity of Care and Individualized Service **C.F.S.A. s.1(d)**

The fourth principle is rooted in the child's need for continuity of care and respect for the child as a person. It recognizes that services to children should be provided in a manner that respects a child's need for continuity of care and for stable family relationships and that the services should take into account physical and mental developmental differences among children. The intent is to tailor the provision of services to a child's individual needs.

(5) Respect for Cultural, Religious and Regional Differences **C.F.S.A. s.1(e)**

The fifth objective of the new Act is to recognize that wherever possible, services to children and their families should be provided in a manner that respects cultural, religious and regional differences.

(6) Special Recognition of Indian and Native People **C.F.S.A. s.1(f)**

The sixth principle of the Child and Family Services Act is an extension of the fifth objective of the Act. It stipulates that Indian and native people should be entitled to provide their own child and family services wherever possible. All services under the Act to Indian and native children and families are to be provided in a manner that recognizes their culture, heritage and traditions and their concept of the extended family. This objective is consistent with the Act's emphasis on services that respond to individual needs, services which are community-based and community specific, and services which respect regional and cultural differences.

(7) Duties of Service Providers **C.F.S.A. s.2(1)(2)**

The Child and Family Services Act also elevates to the status of law a philosophical and practical approach that should characterize all social service delivery:

- the practice of giving parents and children the opportunity to be heard when decisions affecting their interests are being made and when they have questions or complaints regarding the provision of service;

- the need for clear criteria and procedural safeguards to define the discretion of service provider, if the fundamental interests of children or parents will be affected by a decision;

- the necessity of periodic review to monitor the provision of service to children and families. That principle is reinforced throughout the Act by its identification of service decisions that are particularly invasive to a family's autonomy and rights, and provision for review mechanisms;

- provision of service in the French language where appropriate.

3. THE ROLE OF REGULATION

Regulations made under the Child and Family Services Act at the time of proclamation are designed to give uniformity to the new law and to ensure implementation in a manner that will not disrupt the continuity of service for children and families receiving service at the time of proclamation.

In general terms, the intent of the Ministry under its regulation-making power is to initially:

- consolidate regulations under predecessor statutes in order to minimize the volume and complexity of requirements for service providers. This includes an updating of some requirements and elimination of clearly outdated provisions;

- o revise certain regulations made under predecessor statutes to bring those regulatory provisions into line with the best of current practice and policy, where this can be accomplished without imposing substantial new requirements on the service provider;

- o develop a small number of new regulations necessary to implement the Act.

The regulatory requirements will not reflect major shifts in either policy or procedure except where such shift is required by the new Act itself.

4. THE ROLE OF MINISTRY STANDARDS AND GUIDELINES

Wherever practicable, the Ministry intends to implement the new Act through guidelines and standards of practice. A guideline is a Ministry statement recommending a preferred level of care or performance. A guideline may also be a suggestion for service providers about how a particular requirement could be met. A standard is a Ministry statement setting out the minimum acceptable level of care or performance expected of a service provider.

5. DEFINITION OF THE "SERVICE PROVIDER" C.F.S.A. ss.3(1), 27

The Child and Family Services Act defines "service provider" to mean any of the following:

a. any agency approved to provide services under Part I (Flexible Services);

b. a children's aid society;

c. a person or corporation licensed under Part IX (Licensing) to provide service;

d. persons providing service through a purchase of services agreement contracted with the Minister or with an approved agency;

e. the Minister of Community and Social Services (i.e. all Ministry operated services);

f. persons providing services or consultation, research or evaluation and funded by a grant under Part I of the Act.

Foster parents are excluded from the definition of "service provider".

6. SERVICES AFFECTED BY THE ACT **C.F.S.A. s.3**

The Act establishes 5 broad categories of children's services:

a. Child development service, i.e., service for a child with a developmental or physical handicap, a service for that child's family or a service for both the child and his family; **C.F.S.A. s.3(1)7, 26**

The definition is further clarified in the legislation: a developmental handicap means a condition of mental impairment present or occurring in a person's formative years that is associated with limitations in adaptive behaviour. **C.F.S.A. s.3(1)12**

b. Child treatment service, i.e., a service for a child with a mental or psychiatric disorder, a service for that child's family or a service for both the child and the family; **C.F.S.A. s.3(1)8, 26**

This definition is further expanded with regard to secure treatment: a mental disorder means a substantial disorder of emotional processes, thought or cognition which grossly impairs a person's capacity to make reasoned judgments. **C.F.S.A. s.108(c)**

For administrative purposes in service planning, the definition has been further refined:

> Child treatment services are those services provided to a child and/or to the child's family, where the child has been diagnosed by a psychiatrist as having a mental or psychiatric disorder, which:

- o are specifically provided to alleviate the mental or psychiatric disorder; and

- o are provided by, or under the supervision of, a psychiatrist who retains direct clinical responsibility for the case.

c. Child welfare service, i.e.:

(i) residential or non-residential service, including a prevention service;
(ii) a child protection service;
(iii) an adoption service;
(iv) individual or family counselling. **C.F.S.A. s.3(1)9, 26**

Residential service under the Child and Family Services Act is the provision of care to a child under the age of 18 years away from the home of the parent. It includes foster care; **C.F.S.A. s.3(1)25, 26**

For administrative purposes in service planning, the definition is further refined, and the following is the most recent description:

> Child welfare services include client-related services to children provided by children's aid societies as described under section 15(3) of the Legislation.

d. Community support service, i.e., a support or prevention service provided in the community for children and their families; **C.F.S.A. s.3(1)10, 26**

For administrative purposes in service planning, the definition has been further refined:

> Community support services generally do not target a specific identified client but are aimed at:
>
> - o facilitation and/or improvement of social support for populations at risk;
>
> - o reducing the likelihood of need for on-going or more intensive M.C.S.S. services among populations at risk.

Community support services also may include review and advisory bodies.

e. Young offenders service, i.e., a service provided for youths 12 years of age and over who have come into conflict with the law. **C.F.S.A. s.3(1)29**

f. The Ministry is considering using the authority under s.197(1)8 of the Act " to further define 'service' " by adding a sixth service:

Child and family intervention service, i.e., a service for a child with a social, emotional and/or behavioural problem, for the family of a child with a social, emotional and/or behavioural problem, or the child and the family.

For administrative purposes in service planning, the definition could be further refined:

> Child and family intervention services are those services provided to a child and/or the child's family involving planned interventions based on multi-disciplinary professional approaches designed to alleviate a range of social, emotional and/or behavioural problems experienced by children and their families. They include assessment, applying methods of intervention with individuals, groups and families, re-integration activities and consultation to social systems.

7. PROVISION OF SERVICES IN THE FRENCH LANGUAGE

(1) Ministry Objective

A long-term Ministry objective is to ensure that in due course a full range of services in the French language will be available to children and families, where appropriate, in designated areas of the province. Detailed objectives relating to the new policy will be included in the operational plans of the service providers and in the Ministry work plans at area, regional and corporate levels. Area offices in designated areas will play a key role in implementation of the policy. The Office of the Coordinator of French Language Services will offer on-going assistance.

(2) The Service Provider's Obligation

Selected service providers in designated areas will be expected to increase their effectiveness by serving Francophones in their own language. However, not all service providers will be required to provide services through both official languages. Agreed upon time-frames will be established through consultation between service providers and Ministry area staff.

Provision of French language services, "where appropriate" promotes best interests of the child, supports the integrity of the family unit and recognizes cultural differences.

(3) Types of Service

Those service providers called upon to provide French language services will be expected to respond to over-the-counter, telephone and written communications in French when that is the language of the particular client, to produce information materials in French and generally to deal with clients and public in French when that is the preferred language.

(4) Planning Priorities and Procedures

Service planning priorities will be developed in consultation between service providers and area staff. The resulting operational plan will take the following factors into account:

a. service level in existence;

b. service demand;

c. service development realities.

(5) Areas of the Province Designated for French Language Services

The Child and Family Services Act stipulates that services in French be provided "where appropriate". The Ministry's policy on this question is that the appropriate locations for provision of such services should be taken to be

the designated areas identified by the Ontario Government as areas where there are substantial numbers of Franco-Ontarians. These designated areas are:

a. Counties

Stormont, Glengarry (in the United Counties of Stormont, Dundas and Glengarry), Prescott and Russell

b. Regional Municipalities

Ottawa-Carleton and Sudbury

c. Districts

Nipissing, Timiskaming and Cochrane

d. Territorial Districts

Sudbury

e. Localities

Blind River, Elliot Lake, Michipicoten, North Shore and Algoma in Algoma District;

Anderdon, Bell River, Colchester North, Maidstone, Sandwich South, Sandwich West, Tecumseh, Tilbury North and Tilbury West in Essex County;

Dover, Tilbury and Tilbury East in Kent County;

Port Colborne and Welland in the regional municipality of Niagara;

Pembroke, Stafford and Westmeath in Renfrew County;

Penetanguishene and Tiny in Simcoe County;

Geraldton, Longlac, Manitouwadge and Marathon in the Thunder Bay District.

f. Metropolitan Centres

Ministry head offices providing services to French-speaking people throughout the province as well as the significant French-speaking population within Metropolitan Toronto are designated for some French-language capacity.

Also government offices located in Windsor, St. Catherines and Sault Ste. Marie should provide French-language services.

8. SERVICES TO INDIAN AND NATIVE CHILDREN

(1) Generally

In this and other sections throughout these volumes there are references to the provisions for Indian children and families, bands, and those persons who may become "native persons" within the meaning of the C.F.S.A. There is also information about Ministry's policy framework regarding services for persons of native descent who are neither Indian or "native persons" as defined in the C.F.S.A. and information regarding the Ministry's policies and procedures for implementation of the Act's provisions current at the time of writing.

These policies and procedures are interim and may be revised, refined or elaborated as a result of experience and on-going consultation with Indian and native organizations.

Under the general provisions of the C.F.S.A., the Ministry will be able to continue to support specific culturally sensitive services to persons of native descent, whether or not they are Indian or "native persons" as defined in the new Act.

There are persons of native descent who may be neither Indian under the Indian Act nor members of "native communities" that may be designated by

the Minister under the C.F.S.A. Nonetheless, the Ministry will develop policies, procedures and practice guidelines to ensure that all services to children and families of native descent, whether or not they are Indian or "native persons" as defined in the C.F.S.A., are provided in a manner that respects their culture. Input from native persons and organizations regarding these matters will be sought.

Guidelines will be developed with input from native organizations and directives sent to agencies regarding such matters.

(2) Definitions

The statute defines Indian, band, "native person" and "native community" as follows:

a. "band" has the same meaning as the Indian Act (Canada) **C.F.S.A. s.3(1)4**

b. "Indian" has the same meaning as in the Indian Act (Canada) **C.F.S.A. s.3(1)15**

c. "native community" is a community designated by the Minister under section 192 of Part X (Indian and Native Child and Family Services) **C.F.S.A. s.3(1)19**

d. "native person" is a person who is a member of a native community but is not a member of a band. "Native child" has a corresponding meaning. **C.F.S.A. s.3(1)20**

e. "native community" means a community designated by the Minister as a native community for the purposes of this Act. **C.F.S.A. s.192**

The original intent of the identification "native community" in the statute was to enable the Minister to designate communities of Indians that were:

- o located in the remote north on Crown lands;
- o organized in a manner similar to bands; and
- o without status as bands under the Indian Act.

The communities under consideration include those that were recognized by the federal government in April 1985 as bands under the Indian Act. In view of the federal government's recognition of these communities as bands, the Ministry is now reviewing which communities, if any, may be considered for designation in accordance with the original intent.

It should be noted, however, that the new legislation provides for general and specific ways to ensure that the courts and service providers are sensitive to the cultural needs of Indian and native children and families, whether or not they are members of Indian bands or "native communities" designated by the Minister.

(3) Indian and Native Child and Family Services **C.F.S.A. Part X**

Part X of the Act addresses the provision of services for Indian and native children and their families through such mechanisms as:

- designation of native communities (s.192);
- agreements with bands and native communities (s.193);
- designation of a child and family service authority (s.194);
- subsidy for customary care (s.195);
- consultation by a society or agency with bands and native communities (s.196).

Part X was proclaimed in force November 1, 1985 at the request of the Chiefs of Ontario with the understanding that all parties recognize the necessity for a period of transition towards its implementation. Consultation is continuing and information will be distributed as available.

VOLUNTARY ACCESS TO SERVICE

1. "CONSENT" TO VOLUNTARY SERVICE

One of the most basic philosophical assumptions underlying the new Act is the principle that service to children and families should be provided, wherever possible, on a voluntary basis.

Consent, withdrawal of consent, the signing of agreements and terminations of agreements, have historically been a source of concern for both the service provider and the family. Predecessor law did not clearly identify factors that together make up a valid and thereby "safe-to-be-acted-on" signature. That, in turn, has left the service provider in a particularly vulnerable position if a parent or child later claims he did not know what he was being asked to sign, or did not fully understand the implication of his actions.

(1) What Triggers the Requirement for Consent — C.F.S.A. s.27(2)

Consent must be obtained whenever the service to be provided is residential service.

For this type of service, the written "contracting" between the service provider and the person(s) to whom the particular service will be provided, is a visible means by which the Child and Family Services Act encourages the parent and child to engage and invest themselves in the goals sought by the residential service. It also reflects the seriousness of transferring responsibility for caring for the child to persons other than his parents.

The Child and Family Services Act does not specify requirements for consents or agreements before non-residential services can be provided, except in the case of service to a person 16 years of age or older.

(2) Consent Requirements for Services to a Person 16 Years of Age or Older — C.F.S.A. s.27(1)

If the recipient of the service is 16 years of age or older, the service provider must obtain that person's consent to the service, unless:

a. the service has been ordered by the court in child protection or adoption proceedings; or

b. the service is one provided under Part IV of the Act (Young Offenders); or

c. the service is secure treatment as authorized by Part VI of the Act.

The consent of the person 16 years old or older is required for either residential or non-residential service.

(3) Consent Requirements for Non-residential Services to a Child Less than 16 Years of Age

Generally

The Child and Family Services Act does not specify the age at which the child's consent must be obtained before service can be provided. The rules of the common law apply to consents required for non-residential services to a child younger than 16 years.

The rules of the common law require the following elements to be satisfied before a consent can be said to be legally valid;

a. The person giving consent must have a capacity to do so - i.e. be capable of understanding the nature and consequences of the proposed service and alternatives to it, including the option of no service at all, and the risks of giving or withholding consent to a specific course of action.

b. The consent must be an informed one.

c. The consent must be voluntarily given.

d. The consent must be directed towards a specific type of service or agreement.

Counselling to the over 12's **C.F.S.A. s.28**

A service provider may provide counselling to a child who is 12 years old or more, with the consent of the child alone, and without requiring anyone else's consent. If the child is 12 years and older but under 16, the service provider must discuss with the child, at the earliest possible opportunity, the desirability of involving the child's parent in the counselling.

If the child is less than 12 years of age, the service provider must seek the consent of the child's parent(s).

(4) Consent Requirements for Residential Care Services

C.F.S.A. ss.27(1)(2); 3(2)

Under the Child and Family Services Act access to residential care on a voluntary basis is premised on the availability of the following consents:

a. if residential care is sought for a person age 16 or over, that person's consent;

b. if residential care is sought for a child under age 16, consent of the parent as follows:

   (i) if both parents have custody of the child and are available, both parents sign the consent;
   (ii) if only one parent has lawful custody of the child, is the only parent available or the only parent able to act, the consent of that parent alone is sufficient;
   (iii) if the child is in the lawful custody of another individual, the consent of that person alone is sufficient.

If the child is in the lawful care of a children's aid society the consent of the society is sufficient.

If the child is under age 16, the Child and Family Services Act requires the service provider to take the child's wishes into account, if those wishes can be reasonably ascertained.

The Act does not require the consent of the child under age 16 to residential care, unless the means chosen to provide that care is a temporary care agreement negotiated with a children's aid society (in which case consent is required of a child 12-16 years of age).

(5) What Constitutes "Residential Care" for the Purpose of the Consent Requirements **C.F.S.A. s.3(1)25**

If the child's needs cannot be met in his own home, the Act allows the family to seek his admission to residential care. Residential care is defined as boarding, lodging and associated supervisory, sheltered or group care provided for a child away from the home of his parents. It includes foster care.

The Child and Family Services Act excludes the service provider under Part IV (young offenders) from these consent requirements. Young offenders services may be provided only in accordance with eligibility criteria set out in the Young Offenders Act and the Provincial Offences Act.

Access to the following types of residential care entails requirements additional to these general consent provisions:

a. the child's placement with a children's aid society. Part II provisions that address temporary care and custody and special needs agreements govern this type of placement;

b. residential care in a resource providing secure treatment. Part VI governs this type of placement;

(6) Criteria for Taking Consent **C.F.S.A. s.4**

The Child and Family Services Act provides the service provider with the following criteria by which to assure himself that he has a consent that is safe-to-be acted upon:

a. has the parent or child the capacity to understand and appreciate the nature of what he is being asked to sign;

b. does the parent or child further understand and appreciate the consequences of acting or not acting as the service provider proposes;

c. has the parent or child been reasonably informed as to the nature and consequences of the consent or agreement and of alternatives to it;

d. is the parent or child acting voluntarily, without coercion or undue influence; and

e. has the parent or child had a reasonable opportunity to obtain independent advice.

The Child and Family Services Act stipulates that a person under age 18 is not barred by reason of age alone from giving the consent, revoking consent, participating in an agreement for voluntary service or terminating that service.

(7) Obtaining Consent If Parent or Child Lacks Capacity

C.F.S.A. s.4(3); M.H.A. s.1(j)

The Child and Family Services Act recognizes that there are parents and children who cannot understand and appreciate the nature and consequences of what they are being asked to sign, and yet may require services provided under the authority of the legislation. For these parents and children and the professionals seeking to provide service to assist them, access to services has historically been bound up with a court ruling that the individual lacks capacity.

The Child and Family Services Act provides a means by which service may be provided to persons who lack capacity, without the delay and complexity of the court process. The Act requires the service provider to have in hand an assessment not more than one year old affirming that the individual lacks capacity. The service provider may then seek the consent of the "nearest relation", unless the consent relates to a child's adoption, or a parent's consent to child protection proceedings. These latter consents are specifically governed by the requirements of Part VII (Adoption) and Part III (Child Protection).

In all other instances, the service provider must seek consent as set out below:

a. in the case of a child without capacity, the service provider seeks the consent of a person with lawful custody;

b. in the case of a person over age 18, the service provider seeks the consent of any of the following "nearest relatives" who themselves have the ability to understand the subject matter of the consent and are able to appreciate the consequences of giving or withholding consent:

(i) a spouse, of any age;
(ii) if the individual has no spouse, or if the spouse is not available, the service provider looks to any child of the person, provided the child is over age 18;
(iii) if the individual has no child or if none is available, the service provider looks to any parent of the person, or a guardian;
(iv) if the individual has no parent or guardian or if neither is available, the service provider looks to any brother or sister of the person, provided the brother or sister is over age 18;
(v) if the individual has no brother or sister or if none is available, the service provider looks to any other next of kin over age 18.

(8) Consents Required to Discharge a Child From Residential Care
C.F.S.A. s.27(4)

The Child and Family Services Act specifies that where a child is in residential care pursuant to a temporary care or special needs agreement between the child's parents and a children's aid society or the Minister, the child's discharge from the placement requires the termination of the temporary care or special needs agreement. The discharge of a child under age 16 where the child is in a residential placement by means of such an agreement requires consent from the same individuals who gave their consent to the child's admission. Rules governing discharge are set out in the provisions regarding special needs agreements and temporary care agreements.

(9) Consents Required to Transfer a Child to Another Residential Placement

C.F.S.A. s.27(5)

A transfer from one residential placement to another also requires the consent from each person whose consent was required at the time of the child's admission to the residential placement from which he is being removed. The service provider also has a responsibility in these circumstances, to take the child's wishes into account if they can be reasonably ascertained.

Consent is not required in an emergency or where removal is authorized by law.

2. PROVISION FOR CARE OF CHILDREN BY TEMPORARY CARE OR SPECIAL NEEDS AGREEMENT

(1) Generally

Provision of care for children through the mechanism of a voluntary agreement made between the service provider and the child's parent or legal guardian is not new in Ontario law. Amendments to Ontario's child welfare legislation in 1975 introduced the "temporary care" agreement and further amendment in 1978 mandated the "special needs" agreement. "Temporary care" agreements became a preventive tool specifically for children's aid societies. Such agreement allowed a society to provide care for and assume custody of a child, including a child the society might otherwise have brought before the court as a child in need of protection, where the admission of the child to society care was a voluntary action on the part of the child's parents. "Special needs" agreements, on the other hand, could be negotiated with either a children's aid society or with the Minister of Community and Social Services. For children's aid societies these agreements became an alternative to court proceedings to permit the provision of services to a child whose parents could not meet the special needs presented by the child; specifically, services to developmentally handicapped children where the child was not otherwise in need of protection under child welfare legislation.

In 1980 provision for special needs agreements was also introduced to the Developmental Services Act. These agreements, negotiated primarily with the Minister, provided a means by which the Ministry could ensure cost-sharing under the Canada Assistance Plan. Such agreements are occasionally negotiated with a children's aid society, specifically where the society has in the past provided services to the particular family, or in situations where the child's parents relinquish custody of the child to the society. As a matter of policy, the Minister does not enter into a special needs agreement where the intention of the parent is to relinquish legal care and custody of the child.

Prior to proclamation of the Child and Family Services Act, temporary care and special needs agreements were available to certain children in the care and custody of children's aid societies and children in Ministry facilities or community residences operated for the developmentally handicapped. Children in mental health residential programs and those children residing in children's and youth institutions were not encompassed by special needs or temporary care agreement provisions.

(2) Consent for Provision of Residential Care

It is the policy of the Ministry that every child receiving a residential service on a voluntary basis receive that residential service in accordance with:

- a temporary care agreement; or

- a special needs agreement

The Act allows a service provider to provide a residential service to a child who is less than 16 years of age only with the consent of the child's parents or where the child is in a society's lawful custody, the society's consent, except where the Act provides otherwise. **C.F.S.A. s.27(2)**

In addition to providing care by means of a temporary care or special needs agreement, a children's aid society may admit a child to its care by the authority given to a society under Part III of the Act (child protection proceedings). **C.F.S.A. ss.78,81(1)(h))**

(3) Purpose of Signed Consents

This written "contracting" reflects the seriousness of a voluntary transfer of the child's care (and in some cases custody) to persons(s) other than the child's parents. A signed agreement is also a tangible means by which the Act encourages the parent and child to engage, invest and commit themselves to the goals sought from the residential services.

Responsibility for negotiating agreements with parents and explaining the terms of any agreement rests with the service provider.

Agreements are to be signed preferably before admission of a child, but no later than 5 days after admission.

The Child and Family Services Act preserves certain features of predecessor legislation for both temporary care and special needs agreements under the new Act.

(4) Temporary Care Agreements with Societies

In the case of temporary care agreements, those "preserved" features are the following:

a. a temporary inability to care for the child as the essential basis for a temporary care agreement; **C.F.S.A. s.29(1)**

b. an upper limit of age 16 for a child's admission to care under the authority of a temporary care agreement; **C.F.S.A. s.29(2)**

c. a temporary care agreement may not extend beyond a child's 18th birthday; **C.F.s.A. s.29(2)**

d. the initial temporary care agreement may be for any period not exceeding 6 months; **C.F.S.A. s.29(5)**

e. an extension of the agreement is possible, provided the extension(s) combined with the initial period, does not exceed 12 months, and the local director of the society approves the extension(s); **C.F.S.A. s.29(5)**

f. the parent is a full participant in the agreement; **C.F.S.A. s.29(1)**

g. any party to the agreement may terminate it by giving written notice to the other parties; **C.F.S.A. s.33**

h. the obligation of the society in response to such notice or at the expiry date of the agreement to take one of the following courses of action on the child's behalf:

(i) return the child to the person who made the agreement;
(ii) return the child to a person who has obtained a court order for custody since the agreement was made;
(iii) initiate child protection proceedings under Part III of the Act.

C.F.S.A. s.33

i. no temporary agreement may result in a child being in a society's care and custody, whether under temporary care agreement, temporary care order or society wardship for a continuous period exceeding 24 months. **C.F.S.A. s.29(6)**

(5) Special Needs Agreements

In the case of a special needs agreement, the following features are preserved from predecessor legislation:

a. the inability of the family to provide services required by a child because of the child's special need as the essential basis for a special needs agreement. A special need under the Child and Family Services Act means a need related to or caused by a behavioural, developmental, emotional, physical, mental or other handicap; **C.F.S.A. ss. 30(1); 26(d)**

b. the choice given to a parent to contract either with a children's aid society or with the Minister; **C.F.S.A. s.30(1)(2)**

The Minister is deemed by regulation made under the Act to be a child welfare authority for the purposes of entering into an agreement to meet the special needs of a child. **O. Reg. 550/85 under C.F.S.A. s.32(1)**

c. a parent may sign a special needs agreement on behalf of the special needs child under age 18. **C.F.S.A. s.30(1)(2); 27**

If the child is less than 16 years of age, his consent is not required. If the child is 16 years of age or older, the child's consent is required.

d. a special needs adolescent 16 or 17 years of age who is not in the care of a parent may negotiate directly with a children's aid society or the Minister for the provision of service; **C.F.S.A. s.31(1)(2)**

e. a special needs agreement may not be extend beyond the child's 18th birthday; **C.F.S.A. s.32**

f. a special needs agreement may be made for any period specified by mutual agreement of the parties, and approved by a Ministry director, if the agreement is with a children's aid society; **C.F.S.A. s.30(1)**

g. a special needs agreement may be extended for any term mutually negotiated, provided a Ministry director consents to the extension, if the agreement is with a children's aid society; **C.F.S.A. s.30(1)(3)**

h. any party may terminate the agreement at any time by written notice to the other parties; **C.F.S.A. s.33**

i. the obligation of a society in response to a written notice of termination where care and custody has been transferred to the society, or at the expiry of the agreement, is the same as in the case of temporary care agreements.

The Child and Family Services Act stipulates certain additional protections for the child.

(6) Temporary Care and Special Needs Agreements

a. the right to enter into an agreement to provide for a child's care through a temporary care or special needs agreement is extended to a person other than parents, if that person has custody of the child. Predecessor law limited participation to parents and children over age 12;

C.F.S.A. ss.29(1); 30(1)(2)

b. an express right of the parties to stipulate in the agreement that the society or the Minister is entitled to consent to medical treatment for the child where a parent's consent would otherwise be required;

C.F.S.A. ss.29(7); 30(4)

c. if the agreement contemplates residential care and a transfer of legal care and custody to the society, the following are required:

(i) a statement by all parties to the agreement that the child's care and custody are transferred to the society;

(ii) a statement by all the parties who have signed the agreement that the child's placement is voluntary;

(iii) a statement by the person who has custody of the child that he is temporarily unable to care for the child adequately and has discussed with the society alternatives to residential placement of the child;

(iv) an undertaking by the person who has custody of the child to maintain contact with the child and be involved in the child's care;

(v) if it is not possible for that person to maintain contact with the child and be involved in the child's care, that person's designation of another person who is willing to do so;

(vi) the name of the individual who is the primary contact between the society and the person with custody of the child;

(vii) such other provisions that may be prescribed by the regulations under the Child and Family Services Act; **C.F.S.A. ss.29(8); 30(4)**

d. if the special needs agreement does not contemplate a transfer of legal care and custody to the society or Minister, certain of the above-noted requirements nonetheless apply, as follows:

- the term "supervision" is used instead of "care and custody".
- c. (ii) applies.
- a statement to the effect that the child has special needs which the parent is unable to meet is required, in lieu of a statement that a parent is temporarily unable to care for his child.
- c. (iv) to (vii) apply.

e. request to the responsible Residential Placement Advisory Committee to name a suitable person who is willing to maintain contact with the child and be involved in the child's care, if the person who had custody does not do so, or if he does not designate any other person to act in his stead. The name of the individual is to be included in the agreement;

C.F.S.A. s.29(9)

f. a requirement that a children's aid society or the Minister, in the case of an agreement negotiated directly with the Minister, satisfy itself, before entering into an agreement:

(i) that an appropriate residential placement is available;
(ii) that the placement is likely to benefit the child;
(iii) that no less restrictive course of action is appropriate for the child in the circumstances (e.g. there are no appropriate supports sufficient to continue the child's care in his own home);

C.F.S.A. ss.29(4); 30(4)

g. the specific authority given to the family to contract with a children's aid society or with the Minister for provision of services to meet a child's special need; **C.F.S.A. s.30(2)**

h. the requirement that the child cannot be transferred from one placement to another, without the consent of all parties to the agreement, except in an emergency or where the law requires; **C.F.S.A. s.27(5)**

i. the specific authority given to the parties to vary the terms and conditions of the agreement from time to time in a manner consistent with the law, without the necessity of terminating the agreement and entering into a new one. **C.F.S.A. ss.29(10); 30(4)**

j. clarification of the effect of notice to terminate an agreement, specifically; the agreement terminates 5 days after the day on which every other party has actually received the notice of termination, unless the agreement itself specifies a longer period. Such longer period may not exceed 21 days. **C.F.S.A. s.33(2)**

(7) Specific to Temporary Care Agreements

A child 12 years of age and over is a full party to a temporary care agreement, unless he does not have capacity to participate. Full party status entitles the child 12 years of age and over to take an active role in negotiating the specific content of the agreement, and requires his signature to the agreement.

Incapacity to participate must relate to a developmental handicap. "Developmental handicap" under the Child and Family Services Act means a condition of mental impairment present or occurring in a person's formative years that is associated with limitations in adaptive behaviour. The society relies on an assessment not more than one year old, for confirmation of a child's developmental handicap. **C.F.S.A. ss.29(3); 3(1)12**

(8) Specific to Special Needs Agreements

If the contract is a special needs agreement, the child is not a party, although his consent is required if he is 16 years of age or over; **C.F.S.A. ss.30(1)(2); 27**

If the child 16 years of age or over is living independently, he can contract on his own behalf. **C.F.S.A. s.31(1)(2)**

(9) Agreements with the Minister **O. Reg. 550/85**

Regulation under the Act gives the Minister discretion to require any residential care for a child be formalized by a special needs agreement.

The Minister may provide a residential service for a child where the parent refuses to sign an agreement with the Minister for the provision of services to meet the special needs of the child.

However, this exemption will be granted only in exceptional circumstances. Reasons for the parents' refusal to sign the agreement are to be documented in a memo sent to the area office.

Necessary consents must be obtained if an agreement is not signed. It is the agency's responsibility to ensure that these consents are obtained and on file.

Where agreements are not signed by parents, agencies will report number of days of care separately to the Ministry, since costs for these children are not shareable under the Canada Assistance Plan.

Statistical data on a form provided by the Ministry will be required specifying the number of days of residential care provided under a special needs agreement.

Under present Ministry policy, the Minister will delegate authority to sign agreements on behalf of the Minister to approved agencies that will be providing care to the child. This policy allows MR agencies, CMHC's and CYI's to sign special needs agreements instead of forwarding them to the Ministry area office for signature.

Regulation under the Act stipulates:

- The Minister shall be deemed to be a child welfare authority for the purposes of entering into an agreement under subsections 30(2) (special needs agreement with Minister), 30(3) (terms of agreement), 31(2) (Minister special needs agreements with 16 and 17 year olds), or 31(4) (variations of agreement) of the Act to meet the special needs of the child. **O. Reg. 550/85, s.32(1)**

- The agreement referred to in above shall be in a form provided by the Minister. **O. Reg. 550/85, s.32(2)**

- The Minister may require that a special needs agreement be entered into under s.30 or s.31 of the Act where a residential service is provided to a child. **O. Reg. 550, s.33**

(10) Agreements in Effect at the Time of Proclamation of the Act

Temporary care or special needs agreements in effect on the date of proclamation of the Child and Family Services Act continue to their expiry date. Terms and conditions of predecessor legislation remain applicable until the expiry of the agreement (e.g. termination requirements).

Such agreements cannot, however, be extended using the provisions of predecessor legislation. A new agreement under the Child and Family Services Act must be signed so that families and children may benefit from the provisions of the new Act. By policy then:

- A special needs agreement taken under the Developmental Services Act continues to the child's 18th birthday. The Ministry will establish a cut-off date after which new agreements must be negotiated in order for families and children to benefit from the Child and Family Services Act. At the time of writing, this date has not yet been fixed.

- If parties wish to vary terms of an agreement taken under prior legislation, a new agreement under the Child and Family Services Act should be negotiated. This affords all parties the benefits of the new legislation.

(11) Form of Agreement **O. Reg. 550/85, s.31**

Regulation made under the Child and Family Services Act prescribe the following forms for agreements for children's aid societies:

- Temporary Care and Custody of a Child (C.F.S.A. s.29(3)) - Form 2

- Agreement for Services to Meet Special Needs of a Child (C.F.S.A. s.30(1)) - Form 3

- Agreement for Services to Meet Special Needs of a Child 16-18 Years of Age (C.F.S.A. s.31(1)) - Form 4

- Extension or Variation of Temporary Care Agreement (C.F.S.A. ss.29(5); 29(10)) - Form 5

- Extension or Variation of Special Needs Agreement (C.F.S.A. ss.30(3); 30(4); 31(4)) - Forms 6(a), 6(b)

3. PROVISION OF SERVICE TO PERSONS AGED 18 YEARS AND OVER

C.F.S.A. s.10(4)

(1) Generally

The Child and Family Services Act defines a child as a person up to the age of 18 years. In determining a uniform maximum age, it was recognized that age 18 was generally seen as an age by which a person is capable of independent living. However, provision of service beyond age 18 is necessary to allow children who enter the service system close to the maximum age to receive service. Therefore section 10(4) of the Act allows the provision of service to persons who are not children (i.e., persons over age 18) as if those persons were children.

Service provided to persons over 18 years of age can be categorized into three types:

- extension of service
- re-entry into the service stream
- maternity home service.

(2) Extension of Service

Extension of service is intended for persons who were in receipt of a children's service when they reached 18 years of age. The extension of the service beyond the maximum age of 18 allows young persons to remain in the children's services system because there may not be appropriate adult services available, and provides the flexibility for such persons to continue or complete their service plan in order to acquire the necessary skills to function independently. During the extended period, efforts should focus on the future arrangements for the young person; for example, a transfer to an adult service at a more appropriate time. Provision of the extended service is selective rather than automatic and is subject to the criteria specified below.

Criteria for Extension for All Over 18's, Including Crown Wards

Ministry policy establishes the following criteria:

1. the extension allows for the continuation or completion of a plan of care

2. the continued need for a social or mental health service is clearly demonstrated

3. adult social or mental health services have been explored and found to be unavailable or inappropriate

4. a transfer to an adult program is disruptive to the well-being of the young person

Extension of Residential Care

In considering continuation of a residential placement, it should be determined that,

- the program benefits the person

- the placement is appropriate for the person in the circumstances

- a room and board/light housekeeping alternative to the placement is not appropriate for the person in the immediate circumstances, but the plan of care includes efforts that lead to an independent living or long term alternate residential placement.

Former Crown Wards

After age 18, when Crown wardship has terminated, continued service to former Crown wards is subject to the same criteria that are applied to all persons over age 18 requesting an extension of service.

The predecessor provision of the Child Welfare Act allowing continued care and maintenance of former Crown wards for three years following termination of wardship has been eliminated in the Family and Children's Services Act in keeping with the Canadian Charter of Rights and Freedoms. Section 15 of the Charter stipulates that every individual is to be treated with equality, with a right to equal protection and equal benefit of the law, free from discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. However, the affirmative action provisions of the Charter allow disadvantaged individuals or groups to be provided special services or benefits. Since Crown wardship represents a

special circumstance (i.e., all parental rights are severed and transferred to the state), former Crown wards are considered a disadvantaged group eligible for affirmative action.

Extended service, if necessary, will continue to be available for social or rehabilitative purposes in keeping with the criteria specified. For former Crown wards in a residential program for social or rehabilitative purposes, payment of tuition to continue with or complete their education may be included in the plan of care only on the basis of exceptional circumstances. Former Crown wards who require financial support to continue with their schooling are expected to seek out and exhaust all other possibilities before approaching the Ministry for this "special circumstances" funding, e.g. exploration of General Welfare Assistance, student loans and Ontario Student Assistance. The Ontario Student Assistance Program (OSAP), in particular, is intended to assist young persons who wish to pursue post-secondary education but who need financial assistance to do so. Independent applicants, i.e., persons with no parent such as former Crown wards, receive special consideration.

The Ministry expects the assistance to be supplemented with earnings from part-time or summer jobs. In order to assist young persons to obtain training and experience toward securing permanent employment, the Ontario government has initiated the Ontario Youth Opportunities Program. Under this program, eligible employers (e.g. children's aid societies) may apply for wage subsidies to assist with the costs of hiring a young person, such as a former Crown ward. In addition, children's aid societies may assist former Crown wards with the costs associated with continuing their education from monies the societies have acquired privately through bequests, charitable donations, etc.

If none of these alternatives is feasible, then children's aid societies may apply to the Ministry's area office for approval to pay tuition fees out of the societies' allocation. In their request, societies will be expected to document both their efforts and those of the former Crown ward in seeking supplementary financial assistance. In addition, the societies will be required to show that the former Crown ward is motivated to continue his/her schooling. Where appropriate the societies should include the young person's long term plan resulting from the continued studies.

Former Crown wards who are physically or mentally handicapped may be eligible for a number of adult services such as adult MR protective services, GAINS-D, and services under The Developmental Services Act, The Homes for Retarded Persons Act and/or the General Welfare Assistance Program. In cases where the income from GAINS-D, in particular, may be insufficient, continued financial support may be provided by children's aid societies. For example, GAINS-D may not be enough to cover the per diem rates for former Crown wards still in children's residential facilities.

Thus, former Crown wards may be eligible for extended service if they meet the following criteria:

a. Payment of tuition fees to continue or complete schooling:

- o a former Crown ward is not eligible for financial assistance from other sources such as GWA, student loans, OSAP; or

- o a former Crown ward is eligible for financial assistance from other sources but the amount of support is insufficient, and the children's aid society is not able to financially assist a former Crown ward through employment under the Ontario Youth Opportunities Program.

b. Former Crown wards who are physically or mentally handicapped and still in a children's residential facility:

- o the income from GAINS-D is insufficient to cover the per diem rates.

Guidelines for Approval for Extension of Service

- o Extensions of service may be given for one year at a time to a maximum of two years and, in exceptional circumstances, for a third year.

- o Approval for an extension of service, based upon the specified criteria, for the first year rests with the service provider. Approval for the subsequent second or third years is at the discretion of the Minister. This responsibility is delegated to a Ministry director.

- Service providers may be required to provide data on first year extensions of service to the Ministry's area office. The type of information may be determined on the basis of the area office's planning needs. This information may include the number of persons receiving service and the reason(s) for service.

- Service providers requesting approval from the Minister for an extension of service for a second or third year are required to submit documentation including the reason for an extension, the alternative services explored and the reasons why they are not being utilized, a plan of care, a plan for termination, the expected duration of service and the alternatives for the young person if the extension is denied. In cases where the young person has completed the plan of care and requires further service from the adult system but it is not available, the service provider will be required to document the efforts that will be made to overcome the discontinuities between the two systems.

- Written contracts or agreements between the client and the service provider and/or the Minister (e.g., director) may be made. The decision to have a written agreement rests with the service provider for the first year and the Minister for the subsequent years.

- Area offices will be expected to review extensions of service to ensure that they conform to the criteria. In addition, they should use this information to assist service providers to develop individual plans that overcome service discontinuities between children's and adult services.

(3) Re-entry to the Service Stream

Re-entry into the service stream is the provision of service to persons over 18 years of age who have received service, either on a residential or non-residential basis, within the immediately preceding three years. This service allows a young adult who is testing independence to receive further limited support from the service system. Such service may be residential for short-term emergency purposes or may be non-residential, such as crisis counselling.

Criteria for Re-entry

- Re-entry service may be provided for persons who have received service within the immediately preceding three years. For example, a person 18 years of age must have received service at least when he/she was 15 years old and a person 19 years of age must have received service when he/she was 16 years of age. Eligible persons may receive service until they are 21 years of age.

- the service provides short-term emergency residential care or provides support, such as crisis counselling, to young persons testing independence

- the need for a social or mental health service is clearly demonstrated

- Persons seeking re-entry must have received previous service from the same service provider. This criterion is included so that service providers are not caught with demands for brief services without knowing anything about the young person or having to spend time at intake verifying the client's history of previous service. However, if a person has relocated since the service was terminated, re-entry service may be provided by a different service provider within the same service stream if arrangements had been made in advance by the original service provider. For example, if a person who had received a child welfare service from the children's aid society in Kingston moved to Toronto, he/she may receive a service from a children's aid society in Toronto if arrangements had been made by the children's aid society in Kingston.

- re-entry for emergency residential service is contingent upon the availability of placement.

Guidelines for Approval to Re-entry

(a) Emergency Residential

- emergency residential service may be provided for only up to 7 consecutive days

- approval for emergency residential service rests with the service provider

- o service providers may be required to provide data on all re-entries for emergency service to the Ministry's area office. The type of information may be determined on the basis of the area office's planning needs. This information may include the number of persons receiving service and the reasons for service.

(b) Non-residential (Crisis Counselling)

- o re-entry into the service stream for a non-residential service such as crisis counselling may be intermittent and be provided over a period of time

- o Service providers may be required to provide data on all such crisis counselling services to the Ministry's area office. The type of information may be determined on the basis of the area office's planning needs. This information may include the number of persons receiving service and the reasons for service.

(4) Maternity Home Service

Maternity homes offer an holistic approach toward dealing with the needs of the unwed pregnant woman regardless of her age. With no other similar type of service offered in the adult services system, the provision of maternity home service may be provided for persons over 18 years.

Criteria for Maternity Home Service

The criteria for admission of persons over 18 years of age into maternity homes is based upon two principles:

- o the primary consideration for admitting adult unwed mothers-to-be into maternity homes is the presence of factors associated with risk for the mother and/or child

- o residential care should only be provided after all other alternatives have been considered and identified as unavailable or not appropriate at the time of the admission decision.

An applicant is not admitted into a maternity home if she has available an alternative living arrangement and her need for assistance or support can be served by non-residential services. The purpose of the exclusion criterion is to discourage the use of residential care for the provision of services such as counselling, preparation for parenthood and education, if these can be given in a non-residential setting.

Risk Factors to Consider in the Admission Decision

Interpersonal

- o No one is aware of pregnancy
- o No extended family
- o Parents and/or friends not supportive
- o Abandoned by putative father
- o History of abuse in family background.

Social Adjustment

- o Prior inability to cope
- o Erratic or unstable working history
- o Indecision about future plans for baby
- o Immaturity
- o Emotional or mental health problems (e.g., depression, etc.).

Experience

- o Dropped out of high school before 16th birthday
- o Recent immigrant
- o Cultural or language difficulty
- o Previous pregnancy with child having been taken into custody or placed for adoption.

Health

- o Poor nutrition
- o Appearance of being run down
- o Physical disability
- o Difficult previous pregnancy
- o Concern about health of fetus or medical complications of pregnancy.

RIGHTS OF CHILDREN UNDER PART V

1. GENERALLY

Part V of the Child and Family Services Act identifies and protects certain rights for children and families who seek or receive the services authorized or intended by the new legislation.

The provisions of Part V are, at their simplest, an extension of predecessor legislation and Ministry policy and practice. Thus, the principles incorporated in Part V are not particularly new to current law or practice. Those principles are, however, fundamental within the context of the societal values highlighted by the new Act and have been enshrined in the statute as a visible sign of their significance in the day-to-day provision of service to children and their families.

The provisions of Part V may be segregated as follows:

a. identification of three rights that are to be accorded all children receiving service under the new legislation; specifically:

   - the right to be protected from detention in locked premises; **C.F.S.A. s.96**
   - the right to be protected from corporal punishment; and **C.F.S.A. s.97**
   - the right to seek the assistance of the Office of Child and Family Service Advocacy; **C.F.S.A. s.98**

b. identification of rights of children in care;

c. identification and statutory recognition of the Office of Child and Family Service Advocacy, with its ombudsman-like mandate for all children who seek or receive services authorized by the new legislation.

2. RIGHTS OF ALL CHILDREN RECEIVING SERVICES UNDER THE ACT

All children receiving services (residential or non-residential) authorized by the Child and Family Services Act, whether residential or non-residential, are entitled to the following specific protections:

(1) The Right to be Protected from Locked Detention

C.F.S.A. ss.96; 121(1)

No service provider is allowed to detain a child in locked premises in the course of providing service to him, or permit others to do so, except where authorized under those provisions of the Child and Family Services Act governing young offenders (Part IV) and those provisions governing secure isolation and secure treatment of children (Part VI).

Routine locking of premises at night for security is permitted by the Act. "Premises" is not specifically defined by the Act. Ordinary dictionary definition gives it a meaning that encompasses both buildings and the lands on which the buildings are located. (See Appendix 3 for an Interpretative Guide.)

(2) The Rights to be Protected from Corporal Punishment

C.F.S.A. s.97

No service provider is allowed to inflict corporal punishment on a child in the course of providing service to him, or permit others to do so.

In specifying this particular right for the child, the Child and Family Services Act preserves a prohibition of regulation under the now repealed Children's Residential Services Act, and extends it to all service providers. Foster parents and providers of non-residential care are bound by this prohibition.

The Child and Family Services Act does not define "corporal punishment". Ordinary dictionary definition suggests that it is any punishment inflicted on the child's body. Ministry guidelines interpret corporal punishment to include:

a. the striking of a child, with or without the assistance of a physical object;

b. shaking, shoving, spanking or any other form of physical aggression against the child;

c. punishment of a child by another child or group of children that is condoned or instigated by staff or a foster parent;

d. requiring or forcing the child to assume an uncomfortable position, e.g. squatting, bending or standing against a wall;

e. requiring or forcing the child to repeat physical movements as a method of punishing;

f. interference with or interruption of a child's sleep as a method of punishing.

(3) Right to Seek Assistance from the Office of Child and Family Service Advocacy **C.F.S.A. s.98**

Generally

The Child and Family Services Act gives the Minister authority to establish the Office of Child and Family Service Advocacy for the following purposes:

a. to coordinate and administer a system of advocacy on behalf of children and families who receive or seek services provided under the new legislation. Advocacy before a court is excluded from this mandate. Advocacy for children in court proceedings is the responsibility of the Office of the Official Guardian;

b. to advise the Minister on matters and issues concerning the interests of those children and families. This includes advice on serious service delivery problems related to an individual child or the service system as a whole;

c. to perform any similar functions given to it by the Child and Family Services Act or any other provincial legislation.

It is recognized in any service delivery system that there will be those individuals whose needs have not been met through conventional routes and who will need the assistance of an advocate who can act with or on behalf of them to meet their needs.

The Office also acts in a pro-active manner to identify service gaps and larger issues which may adversely affect children and their families.

It is meant to be a stimulus to the system to ensure its responsiveness. The Office has no direct authority or funding available to purchase services on behalf of children and families.

Response to serious concerns and requests for assistance in securing service will necessarily involve the Ministry area office. Therefore, the Office of Child and Family Service Advocacy informs the Ministry Area office where possible prior to any action. In those situations where a serious crisis requires immediate action, the co-ordinator may respond to the crisis and then inform the area office. The advocacy and area office staff will then clarify their respective roles and develop a plan of action.

It is not the intention of the Office of the Child and Family Advocacy to intervene before internal review processes contemplated by the new legislation are utilized.

The Ministry has had an Advocacy Unit in place since 1978. Historically this Advocacy Unit has intervened on behalf of a child if a serious complaint or service difficulty cannot be resolved at the local level. Such cases have included:

a. crisis intervention on behalf of any child whose safety or well-being is in jeopardy within the service delivery system.

b. monitoring children via the C.A.I.S. print-out system who have experienced multiple placement transfers within a short-term period and who therefore seem to be having difficulty finding the appropriate residential placement and providing that information to the area office.

c. giving support to the Interministerial Placement Action Committee (IMPAC) which deals with exceptional children whose service requirements are not being met in another Ministry or in MCSS. In all cases the area office concerned is involved as early in the process as possible.

IMPAC also deals with larger issues such as identifying gaps in the service delivery system in consultation with senior management and relevant area offices.

d. providing consultation at case conference and treatment planning meetings when called in to assist a service provider to ensure that the needs of a particular child are met. This provides a resource of the coordinator who is familiar with services across the province and the country.

e. assisting parents and guardians in making contact within the service system to find the appropriate service and to support them in their negotiations.

f. operating a Direct Access by mail to receive complaints directly from children living in residences licensed by the Ministry. This does not include children in foster care.

Every child living in such a residence must be informed that he/she has a right to contact the Advocacy Unit if he/she has a serious complaint that cannot be resolved locally. To assist in this process the following tools are available - posters, brochures and stamped addressed envelopes. The content of the complaint will be kept confidential between the child and the Advocacy Unit unless it involves an offence against the law, or if the child gives permission for it to be discussed.

A process is developed during the long-term planning to ensure that those individuals unable to read will become aware of and able to use the system.

The procedure is meant to support the staff engaged in providing residential care to children and to ensure access to help when something is seriously wrong.

g. work with staff in other ministries on cooperative projects designed to identify and study issues of joint concern in service delivery. Most of these issues are identified by IMPAC and include such things as service delivery to the deaf and disturbed and dealing with long term developmentally handicapped residents in psychiatric hospitals.

h. liaison with other provinces to facilitate inter-provincial cooperation in the provision of service to individual children and families.

i. liaison with advocacy organizations such as the Canadian Foundation for Children and the Law, The Advocacy Resource Centre for the Handicapped and the Office of the Ombudsman.

j. training and provision of information to service providers regarding service delivery to difficult-to-serve children.

Protocol for Access to Advocacy Office

It is the intention of the Office of Child and Family Service Advocacy to develop protocol for its response to requests that will include the following:

a. immediate response to a child in a facility operated, funded or licensed by the Ministry who complains of abuse or illegal activity within the residence;

b. consultation with child and/or family regarding appropriate means of addressing the particular problem as follows:

(i) first and primary recourse to the appropriate complaints resolution mechanisms specified in the Child and Family Services Act; and
(ii) secondary recourse to Ministry field staff responsible for services within the particular geographic region at issue (e.g. the Ministry program supervisor or area manager);
(iii) final recourse: the Advocacy Office.

Procedure

Any person can apply to the office for assistance including:

- the child
- a parent or guardian
- a friend or advocate
- concerned professionals
- a member of the general public
- a politician.

The complaint to the Office should normally be in writing, and sent to:

The Office of Child and Family Service Advocacy
Ministry of Community and Social Services
6th Floor, Hepburn Block
80 Grosvenor Street
Queen's Park, Toronto
M7A 1E9
Telephone: (416) 965-9282

Special envelopes will be available in all residences. Each complaint will be acknowledged on receipt.

3. ADDITIONAL RIGHTS FOR CHILDREN IN CARE

(1) Generally

Children in care take the benefit of not only the rights given to all children encompassed by the Child and Family Services Act, but also a particular body of rights that flow from their "in-care" status. The child in care is unique in two respects. He has limited access to his parents who would in the ordinary course of events be responsible for his interests. The service provider, by virtue of the child's in-care status, must assume this parental responsibility to an extent. Secondly, the child is "in care", residing apart from his parents because he is not able, for whatever reason, to reside with them. That circumstance charges the service provider with particular responsibility to ensure that the needs of the child which could not be met by his parents are met by the substitute care that is being offered to him.

Part V of the Child and Family Services Act legislates certain specific rights for these children who are receiving care away from the home of their parents. Those rights extend to children residing in foster homes and to children in residential care under Part IV of the Act (young offenders). Responsibility for protecting these rights rests with the service provider, whether the services are provided directly or through a purchase of service agreement and whether operated by the Ministry, an agency (corporation) approved by the Minister, a children's aid society, or a licensee.

Those service providers include:

a. all foster parents, regardless of the number of foster children in the home;

b. group home parents and staff;

c. all staff responsible for children in secure treatment resources;

d. all staff responsible for youths detained or in custody under the Young Offenders Act;

e. all staff responsible for children residing in institutions or residences.

(2) The Right to be Informed **C.F.S.A. s.104**

At the time of the child's admission to the placement, the following information is to be given to the child in language the child understands:

a. the rules governing day-to-day operation of the residential service, including disciplinary procedures; **C.F.S.A. s.104(g)**

b. the child's responsibilities while resident in the placement; **C.F.S.A. s.104(f)**

c. the rights given to the child by Part V of the Child and Family Services Act; **C.F.S.A. s.104(a)**

d. the internal complaints procedure established by the service provider for dealing with a complaint that the child's rights have been violated, and the child's further entitlement to review by a person independent of the service provider; **C.F.S.A. s.104(b)**

e. the existence of the Office of Child and Family Service Advocacy; **C.F.S.A. s.98**

f. if the child is at least 12 years of age and receiving care away from the home of his parent, his right to review of his placement within specified

periods by a Residential Placement Advisory Committee and his further right to review by the Children's Services Review Board;

C.F.S.A. s.104(d)

g. if the child is a youth detained or in custody under the Young Offenders Act (Canada), his right to review by the Custody Review Board.

C.F.S.A. s.104(e)

(3) The Right to Regular Visits with Family **C.F.S.A. s.99**

Unless prohibited by court order, the child who is not a Crown ward has a right to regular telephone contact and visits with his family. The child also has the right to speak in private with family members.

If the child in care is a Crown ward, his right of access must be set out in the Crown wardship order.

(4) Access to Advocates **C.F.S.A. s.99(1)(b)**

The child in care has a right to speak privately with any of the following individuals:

a. the child's lawyer;

b. any other person representing the child;

c. any advocate appointed by the Office of Child and Family Service Advocacy;

d. the Ontario Ombudsman and his staff;

e. a member of the provincial or federal parliament.

(5) Privacy of Mail Communication **C.F.S.A. s.99(3)**

The child in care has a right to send and receive mail that is not read, examined or censored. "Mail" includes both written correspondence and packages.

Outgoing Mail

A child's outgoing mail is not to be read or examined.

Incoming Mail

Opening of incoming mail is permitted only in the following circumstances:

a. the service provider or a member of his staff may open mail in the child's presence and inspect for articles prohibited by the service provider. It is the responsibility of the service provider to inform the child and family about what articles are prohibited. Such articles may be removed and withheld from the child, and the service provider is to record such removal in the child's file.

b. where the communication is not from the child's lawyer, and the service provider believes on reasonable grounds that the contents may cause the child physical or emotional harm, he or a member of his staff may assist the child by examining or reading the letter in the child's presence. The communication is not, however, to be censored or withheld from the child.

Mail from the child's lawyer is not to be opened under any circumstances.

(6) Reasonable Privacy and Possession of Personal Property C.F.S.A. s.100

The child in care has a right to reasonable privacy and possession of his own personal property.

"Privacy" is not specifically defined by the Act. Ordinary dictionary definition suggests that it is the quality of secluding oneself from public view, the right to be alone and without company.

The issue here is a basic respect for the child as a person. It is a logical continuation of those principles of the Child and Family Services Act which promote respect for the needs and rights of individuals and is essentially an attitude towards the child. At its most basic, it is demonstrated by, for example, knocking before entering a child's room. It means not taking

outsiders on tours of the residence without first notifying the residents and requesting permission to enter their bedrooms in their absence. Respect for privacy also includes permission for the child to remove himself from a group living situation for quiet moments in his room.

The right to reasonable possession of personal property means, within the limitations of space, that the child in care has a place to store his possessions, and that the service provider ensures that the child's ownership is respected. In group living situations in particular, it is important that the child be permitted and encouraged to have belongings in the residence that are his alone.

(7) Freedom of Religious Practice **C.F.S.A. s.100(b), 102(a), 103**

The child in care has a right to receive religious instruction and participate in religious activities of his choice, unless his parent has directed otherwise. The child's parent retains the right to direct the child's religious upbringing. If a child is in the care of a children's aid society by order of the court, the society has the right to direct the child's religious upbringing.

The Act gives the child a right to express his views regarding any decision that is to be taken regarding his religious instruction or participation in religious activities.

(8) Right to a Plan of Care **C.F.S.A. s.101(1)**

It is the right of the child in care to have a plan for his care that is designed to meet his particular needs. That plan is to be prepared within thirty days of the child's admission to the placement.

(9) Right to Participate in the Plan for his Care **C.F.S.A. s.101(2)**

It is the responsibility of the service provider to ensure that the child is allowed to participate to the extent that is practicable, given his level of understanding, in the development of the plan for his care and further, in the development of any changes made to it.

(10) Appropriate Nutrition and Clothing **C.F.S.A. s.101(2)(b) & (c)**

The child in care has a right to receive meals that are sufficiently nutritious and appropriate for him, and to be provided with good quality and appropriate clothing, given his size, activities, and prevailing weather conditions.

(11) Regular Medical and Dental Care **C.F.S.A. ss.101(2)(3), 102(b)**

The child has a right to receive medical and dental care at regular intervals, whenever required, and in a community setting wherever possible.

The child's parent retains the right to give or refuse consent to medical treatment for the child, unless the child is in the care of a children's aid society by order of the child protection court.

For children ordered into the care of a children's aid society, consent to medical treatment rests with the society.

(12) Appropriate Educational Opportunity **C.F.S.A. ss.101(2)(e),102(a)**

The child in care has a right to receive an education that corresponds with his aptitudes and abilities, in a community setting whenever possible. The Act stipulates that it is the child's parent who retains the right to direct the child's education, unless the child is in the care of children's aid society by order of the court.

If the society has custody of the child by order of the court, the society directs the child's education, in cooperation with the local Board of Education.

(13) Participation in Recreational and Athletic Activities
C.F.S.A. s.101(2)(f)

The child in care has a right to participate in recreational and athletic activities that are appropriate for his aptitudes and interests and in a community setting, if possible. The intent here is to provide the child with as much involvement in the community as possible so that he is not socially disadvantaged while in care. This eases his eventual re-integration to community life.

(14) Child's Participation in Significant Decisions Affecting Him

C.F.S.A. s.103

The child in care has a right to be consulted and allowed to express his views, to the extent that is practical given his understanding, whenever significant decisions are made which concern him. Significant decisions include decisions regarding medical treatment, education, religion, and decisions affecting his discharge from the placement or transfer to another placement.

This right underscores a basic principle of the new legislation that the child be made aware of significant events in his life and that he have an opportunity to participate in the decisions that affect him.

4. RIGHTS RESERVED TO PARENTS OF A CHILD IN CARE

C.F.S.A. s.102

Except in the case of a child in the care of a children's aid society by order of the court, certain rights regarding the child in care are reserved to the child's parents:

1. the right to direct the child's religious upbringing;
2. the right to direct the child's education;
3. the right to give or withhold consent to medical treatment.

These specific provisions emphasize that parental rights are not wholly abrogated because a child is residing away from the home of the parents. They also clarify the rights and responisibilities of parents in relation to the authority of service providers, indicate specifically where parents should be involved and where their rights supercede those of the child, and ensure ongoing involvement of parents during service provision so as to facilitate any eventual re-integration of the child to his family.

These rights are modified in the case of a child in the care of a children's aid society where parental rights have been suspended by order of the court.

5. REDRESS FOR ALLEGED VIOLATIONS OF THE RIGHTS OF A CHILD IN CARE — C.F.S.A. s.105

(1) Generally

When the rights of a child in care are established in law, then the law must provide a means for ensuring that those rights are respected. There are now and will continue to be a number of indirect mechanisms to accomplish this objective: the Office of Child and Family Service Advocacy, the right to communicate with a lawyer, the provincial ombudsman or members of parliament and monitoring by MCSS program supervisors, particularly through the licensing process.

Nonetheless, to emphasize the fundamental nature of the Part V rights and to ensure an opportunity for the child to be heard, Part V of the Child and Family Services Act establishes a complaint review procedure.

The rationale for this procedure is based, in part, on the Ministry's concern that children in care should not view themselves as being at the mercy of the system. If children have evidence that a program is operated in a manner that affords them an opportunity to affect their situation, they are better motivated to participate in the program.

This procedure set out in Part V is limited in law to the hearing of a complaint regarding alleged violations of rights under Part V.

(2) The In-house Complaint Mechanism — C.F.S.A. s.105(1)

The Child and Family Services Act requires service providers to establish a written procedure for dealing with and hearing a complaint of alleged violations of the rights of a child in care.

Any of the following persons may ask the care provider to undertake an in-house review to attempt to resolve a specific complaint.

a. the child in care;
b. a parent of the child;
c. another person representing the child.

It is the care provider's responsibility to attempt to resolve the difficulty through this informal review of the complaint.

Children placed in foster homes must also have access to an enforcement mechanism for the rights afforded them under Part V. In the case of children's aid societies, the internal complaint mechanism should be compatible with that established under Section 64 of the new Act, and should be integrated with case management practices for children in foster care.

(3) Components of an In-house Complaint Mechanism **O. Reg. 550, s.39**

For the purposes of subsection 105(1) of the Act, the written procedure must set out,

a. the methods by which a child may express concerns with respect to alleged violations of the child's rights under Part V of the Act,

   (i) in the presence of other children and to a program staff person,
   (ii) in private to a program staff person, and
   (iii) in private to the service provider or a person designated by the service provider; and

b. the method by which a parent of a child or other person representing a child may express concerns with respect to alleged violations of the child's rights under Part V of the Act,

   (i) in private to a program staff person, and
   (ii) in private to the service provider.

(4) Further Review by a Person Appointed by the Minister **C.F.S.A. s.106**

If the complainant is not satisfied with the result of the in-house review, he may ask the Minister to appoint a person independent of the care provider to conduct a further review of the complaint. This request must be made in writing. In some cases, it may be difficult for the child complainant to formulate a written request to the Minister. This may also be the case for some parents. It is important that discomfort with or inability to use a written form of communication not be a barrier. Consequently, where

assistance is required to exercise the right, it should be provided by the service provider upon request. This requirement is consistent with the overall duty of the service provider to provide an opportunity for the child and parent to be heard.

The Office of Child and Family Service Advocacy may also assist complainants in formulating their written request to the Minister.

This responsibility of the Minister has been delegated as follows:

- to the area, local, or district manager

- to the regional director where the child is in a facility which reports directly to the regional director.

Requests must be in writing and directed to the appropriate manager who will arrange for the review.

Where the child is from another area or region, the person responsible for carrying out the review will communicate with the appropriate Ministry staff in the other area or region.

Delegation to this level in the Ministry serves to keep area offices informed of important issues related to complaints in residences for which they have supervisory responsibility.

The independent reviewer has all the powers of a program supervisor. He is not required to hold a hearing, but if he chooses to deal with the complaint other than by the formal hearing mechanism, he must set out his reasons for doing so in his report.

The Ministry suggests that the review conducted by the appointee include:

a. interviews with the complainant and with the child (if he/she is not the complainant), where the child is capable of expressing his views;

b. reviews of relevant documents, including the service provider's written complaint procedure, written material on the initial review, other

material as it relates to the matter, such as the service provider's record that the child was informed at the time of admission of his rights and responsibilities, written policies and procedures or records of any incident that gave rise to a complaint;

c. interviews with the service provider and with employees of the service provider where they have knowledge of or involvement in the matter under review;

d. interviews with other individuals as appropriate, such as the child's parents and/or representatives if they were not the complainants.

The appointee will undoubtedly rely on his initial fact-finding to determine whether he should hold a formal hearing.

The independent reviewer must complete his review of the complaint no later than thirty days after his appointment, and report his findings and recommendations in writing to:

a. the complainant;
b. the service provider; and
c. the Minister.

(5) Further Action by the Minister **C.F.S.A. s.107**

If the Minister decides to take any action as a result of the report, he must advise both the complainant and the service provider. The Ministry may develop guidelines to highlight the importance of fair treatment of both complainants and service provider affected by the report and to ensure that the Minister's decision is implemented. These guidelines may include, for example, the period of time within which the Minister's decision must be made and communicated to the complainant and service provider; and the focus of responsibility for implementing and monitoring the implementation of the Minister's decision.

The Minister's decision does not affect any other remedy that may be available to the complainant or the care provider (e.g. civil suit for damages or compensation).

SECURE ISOLATION

1. RESTRICTIONS ON LOCKED ISOLATION AS A MEANS OF CONTROLLING BEHAVIOUR C.F.S.A. ss.120, 121, 122

(1) Generally

All children's programs providing residential care and accountable to the Ministry of Community and Social Services have been subject to restrictions on secure isolation of children. Day Nurseries programs have also been subject to such restrictions.

The Child and Family Services Act substantially expands the Ministry's responsibility to monitor both residential and non-residential programs that have as a component the isolation of children in locked rooms. The Child and Family Services Act, adopting the substance of predecessor law governing secure isolation, requires the approval of a Ministry director to use a room for purposes of secure isolation. The Ministry provides clear criteria for service providers who seek approval for the use of secure isolation, and elevates Ministry policy and practice to the status of statutory law.

All services under the Child and Family Services Act, whether provided directly or by purchase of service arrangement, and whether residential or non-residential, are subject to the Act's provisions on locked isolation.

Predecessor law required operators of residences to have written policies and procedures on secure isolation if it formed a part of the program, and further required them to provide appropriate orientation for staff. Such requirements continue as regulations under the Child and Family Services Act for all services.

The Child and Family Service Act forbids isolation of a child in a locked place except in accordance with the provisions that are now discussed.

(2) The Meaning of Secure Isolation

"Secure isolation" under the Child and Family Services Act means the locking of a child in a room for the purpose of isolating him from others. It is

important to note that quiet rooms and "time out" rooms are not wholly prohibited by law. It is the locking of the room that makes it subject to the provisions of the Act governing secure isolation.

Locking is any method or apparatus to secure the room, be it a key locked mechanism, a door handle out of reach of the child, a sliding bolt or similar devices that would prevent the child from exiting the room unassisted.

(3) Informing the Child

It is Ministry preferred practice that, where a program in which a child is placed has a secure isolation room approved by a director, upon admission to the program the child should be informed of the existence and purpose of the isolation room, the criteria for admission and release, and the availability of complaint procedures as per the Child and Family Services Act, Part V.

(4) Application for Approval of a Locked Room for Use for Secure Isolation of Children **O. Reg. 550/85**

Regulation under the Child and Family Services Act stipulates:

- An application to a director under subsection 120(1) of the Act for approval of a locked room for use for the secure isolation of children shall be made to a director on Form 9. **O. Reg. 550/85, s.44(1)**

- An application on Form 9 shall be accompanied by the applicant's written policies and procedures with respect to the use of a secure isolation room together with such other information concerning the service provider's program, the room and the proposed use of the room for secure isolation as a director considers necessary to determine whether the room should be approved for use for the secure isolation of children. **O. Reg. 550/85, s.44(2)**

- Upon receipt of an application, a director may inspect the premises and the room to be approved for the purposes of determining whether the room can be approved. **O. Reg. 550/85, s.44(3)**

- An approval or renewal of an approval of a locked room for use for the secure isolation of children shall be on Form 10. **O. Reg. 550/85, s.44(4)**

- A refusal or withdrawal of an approval of a locked room for use for the secure isolation of children shall be on Form 11. **O. Reg. 550/85, s.44(5)**

Ministry standards require the following:

- The director's authority to approve, or withdraw an approval, is delegated to Area mangers/Regional directors.

- The period of approval will be for one year.

- The requirements for review of the service provider's written policies and procedures, and the on-site visit of the premises to be approved will be implemented by the program supervisors on behalf of the director (regional director/area manager) as is current practice.

- If approval is considered, it should be justified within an area or district context of availability of secure isolation and is dependent upon service providers being able to:

  (a) demonstrate that they consistently accept and serve children who exhibit the types of behaviour that qualify for secure isolation (see C.F.S.A. s.121(3)(a)(i)).

  (b) meet all other criteria

  (c) give evidence that a secure isolation room is necessary

  (d) demonstrate that alternatives have been attempted, where practicable.

- It is incumbent on the service provider to make application.

- Service providers who require approval must contact the Regional/Area office prior to proclamation of the Act.

Preferred practices of the Ministry include the following:

- For residential services, this approval process may be completed in conjunction with the annual licensing requirements.

- The approval process for non-residential services may be part of regular accountability procedures jointly undertaken by the program and the regional/area office.

- Terms and conditions, in addition to the regulatory requirements (i.e. physical aspects of the room), may be attached to the approval where the nature of the program or features of the facility indicate the need for additional provisions to protect the health, safety and welfare of the children, or to ensure the quality of care provided. These may include further limitations on purposes for which the room may be used, the duration of the approval, monitoring and reporting requirements, or additional staff training on the use of the room.

(5) Criteria for Use of a Secure Isolation Room **C.F.S.A. ss.120;121;122**

The Child and Family Services Act establishes the following restrictions on a service provider who wishes to use secure isolation as a means of controlling a child's behaviour:

- The service provider must first have the approval of a Ministry director, who may designate a room within the premises for use as a secure isolation room; **C.F.S.A. s.120(2)**

- A secure isolation room shall,

  (a) not be used as a bedroom for a child who is in secure isolation;

  (b) contain a window that is unbreakable or some other means of observing the child;

  (c) contain lighting that is adequate to ensure the continuous observation of a child who is placed in secure isolation; and

(d) contain no objects that could be used by the child as instruments of injury or damage. **O. Reg. 550/85,s.40**

Ministry standards require the following:

- Secure isolation may only take place in a locked room as opposed to a locked place such as a stairwell or box. A "locked" room is a room from which a child cannot exit unassisted. This may be accomplished by means of a key locked mechanism, a sliding bolt, or an apparatus which is out of reach of the child.

- Whatever apparatus is used to secure the room, the responsible person must have the key or other means to unlock the door on their person or in the immediate vicinity. In no event should the key or other means of unlocking the door be inaccessible.

- The service provider must ensure that the room reflects due regard for the health and safety of the child. The decision as to what specific features or items are contained in the room must be based on whether such features and items could be used as instruments of injury or damage.

  - a fire escape plan must be developed and drills held at regular intervals

  - the room must contain safety features necessary to prevent the child from injuring him/herself (e.g. appropriate lighting/ventilation, light fixtures protected from possible breakage, windows should be made of safety glass or have wire coverings)

  - the child must be provided with nourishment which reflects normal daily nutritional requirements.

- In addition to the secure isolation room, there shall be available at all times a clearly defined range of less restrictive alternatives which shall include at least:

  - an unlocked quiet room such as an extra room or bedroom, available as a means to segregate the child from the program or the other children; and

- sufficient numbers of staff to permit the assignment of one-to-one supervision of the child throughout the period of disturbance.

(6) Procedures for Placement In, and Release From, Secure Isolation

o Secure isolation may be used only:

(i) if the child's conduct shows that he is likely to cause serious property damage or to cause another person serious bodily harm in the immediate future; and

(ii) no less restrictive method of restraining the child is practicable.

C.F.S.A. s.121(3)

The intention of the Child and Family Services Act is that secure isolation not be used as punishment, but rather as a means of containing a child's dangerous and aggressive behaviour.

o The child who is locked in secure isolation must be observed continuously by a responsible person. **C.F.S.A. s.121(5)**

A responsible person is one who is familiar with the policies and procedures of the service provider and in addition has specific skills in or knowledge of child management techniques.

o The child locked in a secure isolation room must be released within one hour, unless further locked isolation is justified. Justification for further locked isolation must be evidenced by a written approval for longer isolation, signed by the person in charge of the premises, and recording the reasons for not restraining the child by a less restrictive method.

C.F.S.A. s.121(4)

o Where a child is kept in a secure isolation room for more than one hour, the person in charge of the premises in which the secure isolation room is located shall review the child's isolation at prescribed intervals.

C.F.S.A. s.121(6)

o The prescribed interval is at least every 30 minutes. **O. Reg. 550/85, s.43**

- The child must be released as soon as the person in charge of the premises is satisfied that the child is not likely to cause serious property damage or serious bodily harm in the immediate future. **C.F.S.A. s.121(7)**

- No child may be kept in a secure isolation room for a period or periods that exceed an aggregate of 8 hours in a 24-hour period or an aggregate of 24 hours in a given week. **C.F.S.A. s.121(8)**

The intent is that the responsible person who is observing the child report to the person in charge on a regular basis and that the person in charge review the situation at regular intervals and observe the child from time to time. This provides protection for both the child and the service provider. It is important to ensure that a person in a position of responsibility is charged with decision-making. Maintaining a written record is a protection for the staff and service provider. Such information is also useful when the service provider makes his/her quarterly written report to the Ministry director as required by section 122 of the Act. The written record of the use of secure isolation should also be available to the program supervisor as a source document to enable the program supervisor to draw his/her own conclusions about the use of the room, in addition to the program supervisor's consideration of the conclusions of the agency as provided in the quarterly summaries. The information could also be placed in the child's case files.

Ministry standards require the following:

- The responsible person who is continuously observing the child must remain in the immediate vicinity of the secure isolation room at all times (e.g. within sight/hearing distance). This may be accomplished with the aid of one-way mirrors if it is felt that constant visual checks, or the presence of the staff, is not conducive to the settling of the child's disturbance.

- Once placed in secure isolation, reasonable efforts must be made to inform the child of the reasons, and of the availability of complaint procedures.

- Regular attempts must be made where practicable to assist the child in calming himself and returning to a less restrictive situation.

(7) Children Under 12 Years of Age **C.F.S.A s.121(3)**

No child under age 12 may be placed in a secure isolation room unless the service provider has the permission of a Ministry director. The Child and Family Services Act allows that permission to be given only if the service provider can satisfy the director of "exceptional circumstances."

Exceptional circumstances are suggested by situations in which a child under 12 is clearly a danger to others as a result of violent behaviour, a child whose size limits the extent that he can be physically restrained by staff, or situations in which staff restraint has been harmful, counter-productive or ineffective in the treatment or management of the child's behaviour.

The Act does not permit a director to give a service provider blanket permission to use secure isolation for children under 12. The director may give permission for a specific child in a specific instance.

Once approval has been granted by a director for a specific child all of the provisions of s.121 (e.g. maximum time periods, early release) and the corresponding regulations are applicable.

Ministry standards require the following:

- Wherever possible the director's permission for a specific child under 12 in a specific instance must be obtained in writing before the child is placed in secure isolation. In the rare situation where the director is not immediately available to give permission before the child is placed the director's permission should be sought as soon as possible after the child's placement in secure isolation.

- A director may in his/her discretion, give verbal permission for the use of secure isolation for a child under 12. However, this must be followed up in writing as soon as possible.

Where the service provider and the director agree that there are exceptional circumstances in respect of a particular child, then the director must give permission.

Written permission includes the following:

- The name of the child, the reasons for giving permission for secure isolation, the circumstances under which the child may be placed in secure isolation.

- A requirement that the service provider document each use of secure isolation for the child and notify the director of its use.

- Any other conditions that the director deems necessary (e.g. development and implementation of a program to address the circumstances that warranted secure isolation; limitations, in addition to those set out in the Act itself, on the period of secure isolation for the child; review or assessment of the case by a third party; etc.).

(8) Ongoing Review of the Need for a Secure Isolation Room **C.F.S.A. s.122**

The Child and Family Services Act requires the service provider to review the use of secure isolation every 3 months, measured from the date of the Ministry director's approval, and provide a written report to a Ministry director.

The requirement for regular reviews provides service providers with an opportunity to assess internal policies and practices. A review need not be limited to the Ministry's information requirements but may include factors that are not reported such as:

- Incidence of secure isolation in respect of individual children — Is it used more frequently for some children than others? Why? What is the effect on the child? Are there other ways of dealing with the child?

- Incidence of use by individual staff — Do some staff use secure isolation more often than others? Why? Would staff benefit from training in behaviour management?

- Are there particular times in the day when secure isolation is more likely to be used? Are there particular activities which often precede the use

of secure isolation? Is there anything that can be done to reduce the problems which are arising at these times or in the course of these activities?

Ministry standards for the written report stipulate the following for the initial year after proclamation on November 1, 1985:

o The service provider's report must include the following information:

- name of each child for which secure isolation was used; number of times secure isolation was used for each child; duration of confinement

- the ongoing need for a secure isolation room based on statistical information, program policies and procedures, target group served by the program. Any changes in program should be noted

- information on any formal complaint procedure initiated by or on behalf of a child placed in secure isolation along with the outcome of the complaint

- any changes in policies or procedures that the service provider has made as a result of this isolation room.

The intent is that the written report be reviewed by program supervisors to identify any concerns that should be discussed with service providers about the use of secure isolation room. Any serious concerns would be communicated to the director.

In addition, copies of the report will be required to monitor, especially for the first year of implementation, the use of secure isolation, and to determine, from a policy perspective, the need for additional regulations.

The reports will be maintained at the regional/area offices, and requested centrally as needed.

Any other uses of the reports will be determined at the discretion of the area and regional offices.

(9) Service Provider Policies and Procedures with Respect to Secure Isolation

O. Reg. 550/85

Regulation under the Act requires the following:

- Every service provider shall develop and maintain written policies and procedures with respect to the use of a secure isolation room in premises of the provider where it is proposed to place children in secure isolation. **O. Reg. 550/85, s.40(1)**

- Such policies and procedures shall be reviewed with each staff person who is involved in the use of secure isolation upon the initial orientation of the staff person and at least annually thereafter. **O. Reg. 550/85, s.40(2)**

Ministry standards require the written policies and procedures to include:

- permitted and prohibited practices

- identification and use of less restrictive alternatives

- identification of the "person in charge of the premises", and the persons(s) authorized to act in his/her absence

- identification of "responsible persons" for purposes of observation of a child in secure isolation

- consequences for contravention by staff.

Written policies and procedures contribute to a consistent understanding of how secure isolation will operate in the program, assists staff in understanding their specific responsibilities, and ensures that all violations are dealt with in a consistent fashion.

A copy of the policies and procedures should be available to all staff involved in the use of secure isolation.

(10) Records to be Maintained Regarding Use of Secure Isolation

O. Reg. 550/85

Regulation under the Act requires the following:

- Every service provider shall maintain a written record of each instance of the use of a secure isolation room that shall include the name and age of each child placed in secure isolation and the dates and the duration of each use for each child. **O. Reg. 550/85, s.42**

Ministry standards require the written record to include:

- the name of each child for whom secure isolation was used
- the time at which the child entered secure isolation
- reason for admission (e.g. danger to others or property as per Act)
- less restrictive alternatives attempted
- name of person in charge, and responsible person observing child
- behaviour while confined
- written reasons why child cannot be released from secure isolation, by person in charge, at 30 minute intervals
- duration of stay in secure isolation.

SECURE TREATMENT

INTRODUCTION

1. GENERALLY

Secure treatment programs under the Child and Family Services Act, 1984 are uniquely designed for children with identified mental disorders who have caused or attempted to cause serious bodily harm to themselves or others. The Child and Family Services Act defines a "mental disorder" as a substantial disorder of the child's emotional processes, thought or cognition which grossly impairs his capacity to make reasoned judgments. Such children are especially vulnerable. The nature of their illness requires very intrusive and restrictive forms of treatment that impinge significantly on the civil liberties of the child. Prior to proclamation of the secure treatment provisions of the Child and Family Services Act, these children were admitted to secure treatment by means of the involuntary committal procedure set out in the Mental Health Act.

When Part VI of the Child and Family Services Act is proclaimed, it will elevate to the status of law certain practices that have formed the basis of Ministry of Community and Social Services' policy regarding secure treatment over the last few years.

What is preserved, then, is policy and practice. What is substantially new is the elevation of this policy and practice to the status of law, the new role given to the court, and the specific system of checks and balances designed to protect the interests of a child whose needs require service by a secure treatment program.

2. PERSONS AFFECTED

The secure treatment provisions of Part VI of the Child and Family Services Act impact on the following persons:

a. staff and administrators of resources providing secure treatment to children;

b. parents or other persons with lawful custody of the child who seek the child's admission to a secure treatment setting;

c. children's aid societies;

d. the child who seeks admission to a secure treatment program;

e. a physician seeking admission for a child who is 16 years of age or over;

f. staff and administrators of detention and custody resources for young offenders;

g. judges and court administration staff of the Provincial Court (Family Division) of Ontario and the Unified Family Court.

3. CHILDREN AFFECTED

C.F.S.A. ss.3(1)6; 108(c)(e)

Secure treatment services are available to qualifying children up to 18 years of age. The child must have a mental disorder as defined by the Child and Family Services Act and have caused or attempted to cause bodily harm to himself or another person. If the child is under 12 years of age the Minister's consent to admission is also required. If a child reaches age 18 while committed to a secure treatment program, he may continue in the program until the time period specified by the court order has expired.

Secure treatment resources are not available for the purpose of containing a child who is a runaway, a prostitute or self-destructive, if the child does not manifest a mental disorder as defined by the Child and Family Services Act, and meet the other criteria for commitment set out in the legislation.

THE COMMITMENT PROCESS — C.F.S.A. s.110

1. GENERALLY

Under the Child and Family Services Act a child's commitment to secure treatment requires the authority of a court order. The court order ensures that the child's need for secure treatment is balanced in a judicial forum against the risks to the child associated with confinement in a secure facility. Inherent in that consideration is the presumption that a less restrictive method of treatment has been tried and found ineffective or would not be appropriate for the particular child, thus necessitating application to the court for a secure treatment order.

2. WHO DECIDES — C.F.S.A. s.109(3)

A judge of the Provincial Court (Family Division) or the Unified Family Court decides whether the child is to be ordered into secure treatment. Application to the court can be made only if the administrator of the secure treatment facility has given written consent to the application. Provision for this consent is built into the application form. This requirement for consent allows the administrator to assess the situation, determine the appropriateness of the program for the child and the availability of space in the particular program before the court is approached for a commitment order.

3. WHO MAY APPLY — C.F.S.A. ss.110(1); 3(2); Provincial Court Rule 58(5)(6)

(1) Commitment of the Child Less Than 16 Years of Age

Application to the court (Form 20D) may be made by any of the following:

a. the child's parent;

b. a person (excluding the person in charge of the secure treatment program) who is caring for the child, if that person has the consent of the child's parent (Form 20E);

c. a children's aid society that has custody of the child under an order of the child protection court, (e.g. interim custody of the child pending full hearing of the protection application or society or Crown wardship).

(2) The Child 16 Years of Age and Over

Application may be made by any of the following:

a. the child;

b. the child's parent, if the parent has the consent of the child (Form 20F);

c. a physician.

For the purposes of secure treatment proceedings under the Child and Family Services Act "parent" means:

a. both parents, where both have custody of the child;

b. one parent, where that parent has lawful custody of the child;

(i) (e.g. by court order, by agreement, letter of guardianship), or
(ii) the other parent is unavailable or unable to act; or

c. another individual, where that individual has lawful custody of the child (e.g. by court order, agreement, letters of guardianship). **C.F.S.A. s.3(2)**

4. PERSONS ENTITLED TO FORMAL NOTICE OF THE APPLICATION

A copy of the Application (Form 20D) and Notice of Hearing (Form 21) must be served on:

a. the child;

b. any parent of the child, as defined by s.3(2) of the Child and Family Services Act;

c. any person other than a parent who has actual care and control of the child and is not a foster parent or service provider;

d. a representative of the child's band.

5. TIME WITHIN WHICH THE COURT MUST ACT IN A NON-EMERGENCY SITUATION — C.F.S.A. s.110(2)

The Child and Family Services Act requires the court to deal with a non-emergency request that a child be admitted to secure treatment within 10 days of the filing of the application or alternatively, if the child does not have legal representation when he is first brought before the court, within 10 days of the court's order that legal representation be provided for the child.

6. REQUIREMENT FOR A COURT HEARING — C.F.S.A. s.111

The Child and Family Services Act requires the court to deal with the application by formal hearing and to hear oral evidence unless the child has consented to the making of an order without the hearing of oral evidence. The hearing mode for determining the need for the child's commitment to secure treatment affords each person with a recognized interest in that decision an opportunity to present evidence and make argument before a judge who then weighs that evidence and arrives at an ultimate determination.

7. PARTIES TO THE PROCEEDING — O. Reg. 810, as amended by O. Regs. 808/84; 103/85; 570/85

A "party" to a proceeding is defined by the rules governing practice and procedure in the court to mean a person entitled to formal notice of the application.

With regard to Indian and native children, the Ministry agrees in principle that a band and native community representative should be a party to a secure treatment hearing. An amendment to the Court Rules is being requested.

8. REQUIREMENT THAT THE CHILD BE REPRESENTED BY A LAWYER

C.F.S.A. s.110(5)

If the child is not represented by a lawyer when he is brought before the court, the presiding judge must direct that such legal representation be provided. This direction is given as soon as practicable in the proceeding. The Child and Family Services Act does not permit a full hearing of the application until the child has his own legal counsel. This requirement attests to the seriousness with which the Child and Family Services Act considers a child's commitment to secure treatment.

9. THE CHILD'S PRESENCE AT THE HEARING

C.F.S.A. s.110(7)

The Child and Family Services Act gives the child the right to be present at the court's hearing of the application, unless:

a. the child's presence at the hearing would cause the child emotional harm; or

b. the child does not wish to be present.

If the child does not wish to be present, he may consent to the holding of the hearing in his absence. The consent must be in writing and given only after the child has obtained legal advice. The Child and Family Services Act gives the court discretion to require the child to be present at all or part of the hearing, notwithstanding the consent, if, for example, the court wishes to assure itself that the child has been adequately informed.

10. ORAL EVIDENCE REQUIREMENT

C.F.S.A. s.111

The Child and Family Services Act requires the court to hear oral evidence unless the child consents to the making of a commitment order without the

hearing of oral evidence. That waiver is manifested by the child's written consent, given only after the child has obtained legal advice, and filed with the court.

This requirement does not mean that documentary evidence (e.g. medical reports), can be filed only if the child has waived his right to the hearing of oral evidence. The provisions of the Evidence Act governing the court's reception of documentary evidence will apply in these hearings.

Even if the child has waived his right to the hearing of oral evidence the judge may require it.

The child's consent is not effective for more than a single 180-day period of commitment.

11. CRITERIA GOVERNING COMMITMENT

The applicant must satisfy the court of each of the following:

a. that the applicant is a person entitled to apply for a commitment order under Part VI of the Child and Family Services Act; **C.F.S.A. s.110(1)**

b. that the administrator in charge of the secure treatment program to which admission is sought has given his written consent to the application for a commitment order; **C.F.S.A. s.110(1)** **Form 20D**

c. that if the child is under 12 years of age, the minister has given written consent to the child's commitment; **C.F.S.A. s.113(2)** **Form 20D**

d. that the child has a mental disorder, as defined by the Child and Family Services Act; **C.F.S.A. s.108(c)**

e. that the child, as a result of the mental disorder, has caused serious bodily harm to himself or another person, or has attempted to do so in the 45-day period immediately preceding,

(i) the application; or

(ii) the child's detention or custody under the Young Offenders Act or the Provincial Offences Act; or

(iii) the child's admission as an involuntary patient to a psychiatric facility under the Mental Health Act;

f. that on a separate occasion within the last 12 months, the child has caused serious bodily harm to himself or another person, has attempted to cause that harm or by his words or conduct made a substantial threat to cause that harm, or alternatively, in committing the act or attempt at bodily harm the child has attempted to cause or actually caused a person's death;

g. that the secure treatment program would be effective to prevent the child's destructive or self-destructive behaviour;

h. that treatment which is appropriate to attend to the child's mental disorder is available at the secure treatment resource proposed; and,

i. that no less restrictive method of providing treatment appropriate for the child's mental disorder is suitable in the circumstances.

If the applicant is a physician, he must also satisfy the court that he believes each of these criteria to be met.

12. INDEPENDENT ASSESSMENT OF THE CHILD'S NEED FOR SECURE TREATMENT C.F.S.A. s.112

(1) Generally

The court may order an independent assessment of the child's need for the secure treatment proposed, either on its own initiative or at the request of a person recognized as a party to the proceeding.

(2) Requests by a Party

There is nothing in the Child and Family Services Act that precludes a request for an independent assessment initiated by the applicant or any other party to

the proceeding (e.g. the child). If the costs of the assessment are not otherwise covered, the person requesting the independent assessment must be prepared to bear the assessor's costs.

It is suggested that any party requesting an independent assessment of the child be prepared to place before the court the following specifics in order to avoid undue delay in the court's disposition of the application:

a. name of the proposed assessor, with sufficient information regarding that person's experience and professional qualifications to satisfy the court that the person is qualified to perform the assessment.

   Note: An individual who is providing service in the secure treatment program to which the child's admission is sought does not qualify as an independent assessor under the Child and Family Services Act;

   C.F.S.A. s.112(3)

b. the consent of the assessor to undertake the assessment and provide a report to the court within a specified time frame specified by the court not to exceed 30 days, unless the court is satisfied that a longer period is necessary. **C.F.S.A. s.112(2)**

c. a request that the assessor address at the beginning of his report the desirability of withholding all or part of the assessment report from the child so that the court is alerted to the need, if any, to rule on the issue.

(3) Disclosure of the Assessment Report to the Child **C.F.S.A. s.112(6)**

The Child and Family Services Act allows the assessment report to be withheld from the child if the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm. "Emotional harm" is not given any technical meaning by the Act.

(4) Distribution of the Assessment Report **C.F.S.A. s.112(4)(5)(6)**

It is the responsibility of the court to provide each of the following persons with a copy of the assessment report:

a. the applicant;

b. the child, unless the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm;

c. the child's lawyer;

d. any parent appearing at the hearing;

e. the administrator of the secure treatment program;

f. where the child is a Indian or a native person, a representative chosen by the child's band or native community;

g. the court may also require a copy of the report to be given to a parent who does not attend the hearing but is, in the court's opinion, actively interested in the proceedings.

13. SPECIFICS REQUIRED IN THE COURT'S DECISION C.F.S.A. s.115

The Child and Family Services Act requires the court, where it makes a commitment order, to give:

a. the reasons for its decision;

b. a statement of the plan, if any, for the child's care on release from the secure treatment program;

c. a statement of the less restrictive alternatives considered by the court and why they were rejected by the court.

14. ADMINISTRATOR'S RESPONSIBILITY TO PREPARE A PLAN FOR THE CHILD'S CARE ON RELEASE C.F.S.A. s.115(2)

If no plan for the child's care on release is available to the court at the time of the order for the child's commitment, the Child and Family Services Act

requires the adminstrator in charge of the secure treatment program to which the child has been committed to prepare such a plan and file it with the court within 90 days of the order.

15. MAXIMUM PERIOD OF COMMITMENT — C.F.S.A. s.114

Where the court makes a commitment order, the child is committed to the secure treatment program for a fixed period of 180 days unless the administrator releases the child (see below). The court does not have discretion to order a lesser or a greater period. In the calculation of the 180-day period, time spent in the secure treatment program pending a commitment order is to be counted.

16. RESTRICTED EFFECT OF COURT'S ORDER

(1) Requirement of Parental Consent or Wardship Order Within 60 days of Court Order, if Applicant Was a Children's Aid Society

C.F.S.A. s.114(2)

If the applicant for the secure treatment order was a children's aid society, the child must be released from the program after 60 days, notwithstanding the court's order, unless the society has obtained either the consent of the child's parent(s) to the full 180 day commitment or alternatively, a society or Crown wardship order from the child protection court.

(2) Administrator's Overriding Discretion to Release the Child

C.F.S.A. s.117

Notwithstanding a court order authorizing the child's commitment, the administrator in charge of the secure treatment program where the child is resident has discretion to release the child unconditionally from the program, provided:

a. the administrator gives reasonable notice of his intention to the person with lawful custody of the child;

b. the administrator is satisfied that:

(i) the child no longer requires the secure treatment program, and

(ii) there is an appropriate plan for the child's care on release from the secure treatment program.

The administrator also has discretion to release the child from the program from time to time for medical or compassionate reasons or to place the child in an open setting on a trial placement basis. The adminstrator may attach conditions to that release.

The Ministry of Community and Social Services has provided the following guidelines to administrators in charge of secure treatment programs:

a. An administrator's decision to release a child from secure treatment under section 117, should be based on the recommendations of clinical staff responsible for the supervision, direction and delivery of the child's treatment.

Clinical staff include psychiatrists, psychologists, social workers and other professionals as appropriate.

b. In making his or her decision, the administrator should consider such things as the degree of risk to the child or others if the child is released. Consultation with clinical staff should include discussion of the child's current status in comparison to the criteria for admission in the first place and the child's ongoing need for treatment.

c. The administrator may not release a child unless there is an appropriate plan for the child's ongoing care. Clinical staff should be consulted on the appropriateness of the plan for the child.

Note that the plan need not be developed and implemented by staff of the secure treatment facility. It is necessary only that the administrator be satisfied that provision has been made for appropriate ongoing care of the child following release. e.g. transfer to less restrictive residential facility, transfer to home with ongoing day treatment.

EMERGENCY ADMISSIONS — C.F.S.A. s.118

1. GENERALLY

The Act recognizes that there may be emergency situations which require the child's immediate admission to secure treatment. The authority to admit a child to secure treatment in an emergency is given to the administrator in charge of the secure treatment facility. The emergency admission must be followed by formal application to the court for a commitment order, if the child is to be held in secure treatment longer than 5 days.

2. WHO DECIDES — C.F.S.A. s.118(1)

It is the responsibility of the administrator in charge of the secure treatment program to decide whether to admit a child to the secure treatment program in an emergency.

3. WHO MAY APPLY — C.F.S.A. s.118(1)

(1) Admission of a Child Less Than 16 Years of Age

Any of the following persons may ask the administrator to admit the child to secure treatment on an emergency basis:

a. the child's parent;

b. a person who is caring for the child, if that person has the consent of a parent;

c. a child protection worker who has apprehended the child in accordance with the child protection provisions of the Child and Family Services Act (Part III);

d. a children's aid society that has custody of the child under an order of the child protection court, (e.g. interim custody of the child pending full hearing of the protection application or society or Crown wardship).

(2) Admission of a Child 16 Years of Age or More

Any of the following persons may seek an emergency admission:

a. the child;

b. the child's parent, if the child consents;

c. a physician, if he can satisfy the administrator of a secure treatment program that the child meets each of the admission criteria.

(3) Specific to a Physician

Note that a physician has status to request commitment only for a child 16 years of age or more. In such case the consent of the child is not required. If, however, the parent requests emergency admission for the child, the child's consent is required.

In this manner the new legislation recognizes the older child's right to participate in the treatment decision and at the same time acknowledges the special expertise of a physician as the person best qualified to assess whether the child's immediate need for treatment outweigh the law's general requirement that such treatment be administered only with his consent.

(4) Specific to an Application by a Children's Aid Society

A children's aid society does not have status to request emergency commitment of a child 16 years of age and over.

4. CRITERIA GOVERNING EMERGENCY ADMISSIONS C.F.S.A. s.118(2)(3)

The Child and Family Services Act allows the administrator in charge of the secure treatment facility, to admit a child if he has reasonable grounds to believe each of the following:

a. that the child has a mental disorder, as defined by the Child and Family Services Act;

b. that during the 7 days immediately preceding the request for emergency admission the child as a result of the mental disorder, has caused or attempted to cause serious bodily harm to himself or to another person;

c. that the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself or another person;

d. that treatment appropriate for the child's mental disorder is available at the place of secure treatment to which admission is sought; and

e. that no less restrictive method of providing treatment for the child's mental disorder is appropriate in the circumstances.

The administrator has discretion to admit the child on an emergency basis, even if the child has not caused or attempted to cause serious bodily harm to himself or another person within the preceding 7 days, if:

a. each of the other criteria set out above are met; and

b. the child, after obtaining legal advice, consents to his admission, and

c. if the child is less than 16 years of age, the child's parent also consents to the admission. If the child is in the lawful custody of a children's aid society, the society is entitled to consent to the admission in lieu of the parent.

5. FIVE-DAY LIMIT ON EMERGENCY ADMISSION C.F.S.A. s.118(6)

As soon as practicable after the child's emergency admission, and in any event, within 5 days after admission, the child must either be released from the secure treatment resource or alternatively, an application must be filed with the court seeking a formal commitment order.

In this manner, the child admitted to secure treatment on an emergency basis is ensured a judicial review of his need for continuation of that treatment.

The Child and Family Services Act requires the court to deal with the matter within 5 days of the filing of the application if the child is in secure treatment on an emergency admission. "Dealing with the matter" does not impart a requirement that the judge reach a final decision within that 5-day period. However, it does mean that the child is before the court and that preliminary matters (e.g. the appointment of counsel for the child) are to be addressed so that the judge is able to proceed to full hearing without undue delay.

The Child and Family Services Act requires the court to complete its hearing of the application and to render its decision no later than 45 days after the application has been filed, unless both the applicant and the child agree to a longer period for the court's decision.

The child remains in the secure treatment facility until the court proceeding is completed.

APPLICATION FOR EXTENSION OF THE SECURE TREATMENT COMMITMENT ORDER C.F.S.A. s.116

1. WHO DECIDES

A judge of the Provincial Court (Family Division) or the Unified Family Court determines, on the basis of evidence placed before the court, whether the child's commitment to secure treatment is to be extended beyond the 180-day period specified by the court order.

2. WHO MAY APPLY

An application to the court to extend the child's commitment in the secure treatment program requires the consent of the administrator of the secure treatment program. If that consent is obtained, any of the following persons may file an application (Form 20D) with the court seeking an extension of the child's commitment:

(1) For the Child Less than 16 Years of Age

a. the child's parent;

b. a person, other than an administrator who is caring for the child, if the child's parent gives consent to the application (Form 20E);

c. a children's aid society that has custody of the child under an order made by the child protection court, (society wardship, Crown wardship or a temporary care and custody order) pending full hearing of a protection application;

d. the administrator in charge of the secure treatment program where the child is committed, provided he has the parent's written consent to the application (Form 20E).

(2) For the Child Over Age 16

a. the child;

b. the child's parent, if the child gives written consent to the application (Form 20F);

c. a physician.

3. TIME TO APPLY

C.F.S.A. s.116(1)(2)

The application must be brought before the expiry date of the period of commitment set out in the court's most recent commitment order.

Once application for extension is filed with the court, the child may be kept in the secure treatment program until the court disposes of the application.

4. REQUIREMENT FOR HEARING

C.F.S.A. s.110(4)(7)

Application for extension of the child's commitment must also be determined by formal hearing.

The hearing may not be adjourned for a period in excess of 30 days unless both the applicant and the child consent to a longer period.

5. REQUIREMENT FOR LEGAL REPRESENTATION OF THE CHILD

C.F.S.A. s.110(5)

If at the time of the application for extension the child does not have legal representation, the court as soon as practicable must direct that legal representation be provided. The court has no jurisdiction to proceed to full hearing of the application until the child has legal counsel, whether the child desires legal representation or not.

6. CHILD'S WAIVER OF ORAL EVIDENCE AND/OR HIS PRESENCE AT THE EXTENSION HEARING

C.F.S.A. ss.110(7), 111

The child may consent to the making of an extension order without the hearing of oral evidence and may also consent to an order being made in his absence subject to the constraints set out earlier.

7. CRITERIA FOR EXTENSION OF THE CHILD'S COMMITMENT

C.F.S.A. s.116(9)

The applicant for extension of the child's commitment in the secure treatment program must satisfy the court of each of the following:

a. unless the applicant is the administrator himself, that the administrator in charge of the secure treatment program has given his written consent to the extension application; **C.F.S.A. s.116(1)(a)**

b. if the applicant is a children's aid society, that the society has custody of the child by an order of the child protection court (society or Crown wardship or an order of temporary care and custody pending full hearing of the protection application); **C.F.S.A. s.110(1)1.(iii)**

c. if the applicant is the parent, and the child is 16 years of age or more, that the parent has the child's written consent to the extension;

C.F.S.A. s.110(1)2

Consent of the child under age 16 is not required. **C.F.S.A. s.110(1)1**

d. if the applicant is the administrator of the secure treatment program, that the parent gives written consent to the extension application. If the child is in the lawful custody of a children's aid society, the administrator seeks the written consent of the society in lieu of the parent's consent.

C.F.S.A. s.116(1)(b)

If the applicant is a person other than the administrator caring for the child and the child is under 16 years of age, that he has the parent's written consent to the application; **C.F.S.A. s.110(1)(iii)**

e. that the child has a mental disorder as defined by the Act; **C.F.S.A. s.116(4)(a)**

f. that the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself or another person; **C.F.S.A. s.116(4)(b)**

g. that no less restrictive method of providing treatment for the child's mental disorder is appropriate in the circumstances; **C.F.S.A. s.116(4)(c)**

h. that the child is receiving the treatment proposed at the time of the original order, or other appropriate treatment; **C.F.S.A. s.116(4)(d)**
and

i. that there is an appropriate plan for the child's care on release from the secure treatment program. **C.F.S.A. s.116(4)(e)**

The intent here is to ensure that such planning contemplates a transfer of the child to a less restrictive form of service once the dangerous behaviour has been contained. This could include transfer to home with follow-up out-patient treatment or support by the secure treatment facility or another service provider.

8. INDEPENDENT ASSESSMENT OF THE CHILD'S CONTINUING NEED FOR SECURE TREATMENT

Refer to this heading under The Commitment Process.

PEACE OFFICER ASSISTANCE TO TRANSPORT THE CHILD

C.F.S.A. s.119

The Child and Family Services Act authorizes a peace officer (which includes a police officer) to take the child to the secure treatment facility to which the court has committed him, or to assist an applicant seeking an emergency admission for the child.

Any of the following persons may request such assistance:

1. FOR CHILDREN UNDER AGE 16

a. the child's parent;

b. a person caring for the child with the parent's consent;

c. a child protection worker who has apprehended the child in accordance with the child protection provisions of the Child and Family Services Act;

d. a children's aid society that has custody of the child by order of the child protection court, whether society or Crown wardship, or temporary care and custody pending full hearing of a protection application.

2. FOR CHILDREN OVER AGE 16

a. the child;

b. a parent of the child, if the child consents to the application for commitment to the secure treatment program;

c. a physician.

Whether such assistance will be made available is in the discretion of the peace officer. **C.F.S.A. s.119**

INTRUSIVE PROCEDURES AND PSYCHOTROPIC DRUGS UNDER PART VI

1. INTRUSIVE PROCEDURES — C.F.S.A. ss.123, 124, 125

(1) Generally

The Child and Family Services Act sets out criteria and procedures for the use of an "intrusive procedure" under the Act, and requires a service provider, when these sections are proclaimed:

a. to be approved by the Ministry for the use of intrusive procedures;

b. to establish a review team for the purposes of reviewing and approving the use of intrusive procedures.

Intrusive procedures have been defined in broad terms in the Child and Family Services Act with the intent that they be further circumscribed in regulations and/or guidelines. The Act's broad definition provides flexibility necessary to revise and update the definitions consistent with current knowledge regarding this category of practices. Such flexibility would not be possible if narrow definitions were entrenched in the statute itself.

The Act defines an "intrusive procedure" to be any of the following:

a. a mechanical means of controlling behaviour;

b. an aversive stimulation technique; or

c. any other procedures prescribed by the regulations as an intrusive procedure.

A key task in the development of regulations and standards is the identification and differentiation of intrusive procedures from other techniques employed by a service provider to manage a child's behaviour.

The Ministry, in consultation with professionals with specific expertise in this area, will develop guidelines and regulations to assist service providers. Subsequent work will be undertaken to determine the ongoing viability of the guidelines and regulations. Guidelines developed by the Ministry should ensure that the use of intrusive procedures can be incorporated appropriately into the approved service provider's case management system and in the child's plan for care.

(2) Criteria for Use of an Intrusive Procedure

It is the responsibility of the service provider to ensure that:

a. he has been approved as a provider who may use intrusive procedures in his provision of service to children;

b. he has established a review team for the purpose of monitoring and approving the use of intrusive procedure in individual cases:

(i) the particular intrusive procedure contemplated is specified in the Minister's approval; **C.F.S.A. s.125(3)(a)**

(ii) the intrusive procedure is used only in accordance with any conditions and limitations set out in the Minster's approval; **C.F.S.A. s.125(3)(b)**

(iii) the service provider has obtained the approval of his review team to use the intrusive procedure within the 30-day period immediately preceding the service provider's contemplated use of the intrusive procedure. **C.F.S.A. s.125(3)(c)**

(3) Emergency Use

A service provider approved to use intrusive procedures may administer a procedure to a child in an emergency if:

a. the approved service provider has reasonable grounds to believe that any delay in administering the intrusive procedure would cause the child or another person serious mental or physical harm; **C.F.S.A. s.125(6)(a)**

b. the intrusive procedure contemplated for the child is specified in the Minister's approval; **C.F.S.A. s.125(6)(b)**

c. a child over age 16 either consents to the use of the intrusive procedure or apparently does not have the capacity to make that decision; **C.F.S.A. s.125(6)(c)**

d. the parent of the child under age 16, (or the children's aid society, if the child is in the custody of the society) either consents to the use of the intrusive procedure or is not immediately available to consent. **C.F.S.A. s.125(6)(d)**

It is the responsibility of the service provider to further ensure:

a. that an intrusive procedure in an emergency situation is not administered to a child for a period exceeding 72 hours without the approval of the service provider's review team;

b. if the emergency requires the use of an intrusive procedure for a child, that the approval of the review team is sought as soon as possible and within 72 hours of the first use of the intrusive procedure; **C.F.S.A. s.125(6)**

c. that he abides by the ruling of the review team with respect to any further use of the intrusive procedure. **C.F.S.A. s.125(7)**

The consent of a parent is not a prerequisite in an emergency situation.

(4) Seeking the Minister's Approval

The Act prohibits use of an intrusive procedure by any one other than a service provider approved for that purpose. The Minister may specify the form of intrusive procedures and attach terms and conditions to its use. The Minister's approval may be revoked, suspended or amended at any time, provided the Minister gives notice to the service provider of his intended action, stating his reasons.

(5) Seeking the Approval of a Review Team to the Use of Intrusive Procedures **C.F.S.A. ss.108(3), 123, 127(1)(2)**

A service provider who is approved to use intrusive procedures must establish an interdisciplinary review team to monitor their use and further must seek the approval of his review team before he administers an intrusive procedure to a child.

That team reviews the child's need, either approving or refusing the proposed use of an intrusive procedure for the child. The team also reviews any recommendation that a child in the service provider's care undergo:

a. non-therapeutic medical or chemical experimentation;

b. psychosurgery;

c. non-therapeutic sterilization;

d. electro-convulsive therapy.

The review team must be composed of two or more persons employed by the service provider and at least one other person not employed by the service provider who is approved by the Minister. The team may include a legally qualified medical practitioner. If the review concerns the therapies outlined above, one of the members of the team must be a legally qualified medical practitioner. There are no upper limits on the size of the teams.

For purposes of reviewing intrusive procedures, a panel of at least 3 review team members is required.

(6) Criteria for Approval of the Review Team

The review team's approval must be obtained in advance of the use of the intrusive procedures, unless the situation is an emergency, and must not be more than 30 days old at the time the intrusive procedure is used.

The review team cannot approve the use of an intrusive procedure for a particular child unless the service provider satisfies the review team of the following:

a. if the child is 16 years of age or more,that the child consents to its use;

b. if the child is less than 16 years of age, that the child's parent consents to its use or alternatively where the child is in the care of a children's aid society, the society consents to its use;

c. that the child's behaviour warrants its use;

d. that at least one less intrusive alternative therapy to improve the child's behavior has been attempted without success;

e. that no other less intrusive alternative is practicable; and

f. that there are reasonable grounds to believe that the procedure would improve the child's behaviour.

Where the child is under 16 years of age or lacks capacity to understand and appreciate the nature and consequences of what is happening, the review team must consider the child's views and preferences, where they can be reasonably ascertained.

The review team must provide the service provider with a report for every review conducted.

(7) Reports Required from the Interdisciplinary Review Team

In addition to determining the appropriateness of an intrusive procedure for a particular child, the interdisciplinary review team is required to make reports. It must report to the service provider on every review it conducts. It is also asked to make reports of its activities to the Minister, or his delegate, on its activities at prescribed intervals, to keep the Ministry informed as to the number of reviews conducted, the decisions made and the types of procedures involved.

(8) Exemption for Restraints Necessary to Transport Young Offenders

A service provider may use restraints that are reasonably necessary to transport a young offender detained or committed to custody under the Young Offenders Act (Canada) without contravening the provisions relating to intrusive procedures.

2. PSYCHOTROPIC DRUGS C.F.S.A. s.126

(1) Generally

The Child and Family Services Act also provides specific criteria regarding consent to the use of psychotropic drugs. The administration of psychotropic drugs to children is a very serious intervention and the legislation places particular emphasis on the service provider's responsibility to ensure that fully informed consents have been obtained.

As it may not be the service provider who is actually administering the drug, he will have to ensure that policies and procedures are in place to ensure compliance with the Child and Family Services Act provisions.

A psychotropic drug is defined in the Act as a drug or combination of drugs prescribed in regulations, as a psychotropic drug.

(2) Criteria for Use of a Psychotropic Drug C.F.S.A. s.126(1)(2)(3)

It is the responsibility of the service provider to fulfill the following requirements before any prescribed psychotropic drug is administered to a child in the service provider's care:

a. that the child over age 16 has given his consent, if he has capacity to do so;

b. that the parent of a child under age 16 has given consent, or alternatively, if the child, is in the custody of a children's aid society, the society has given its consent; C.F.S.A. s.126(1)

c. that the service provider has considered the views and preferences of the child under age 16 or the child who lacks capacity, if those views can be reasonably ascertained, and the situation is not an emergency;

C.F.S.A. s.126(3)

d. that the consent clearly identifies the psychotropic drug contemplated, and specifies:

(i) what condition the psychotropic drug is intended to alleviate;
(ii) the range of intended dosages;
(iii) risks and possible side effects associated with the psychotropic drug, and how they vary with different dosages; and
(iv) the frequency with which and the period of time during which the psychotropic drug is to be adminstered.

(3) Emergency Use **C.F.S.A. s.126(4)(5)**

The legislation provides that, under certain circumstances, a service provider may administer a psychotropic drug to a child on an emergency basis for a period of up to 72 hours without obtaining the necessary consents. In order to administer the drugs on an emergency basis, there must be reasonable grounds for the service provider to believe that:

a. delay in the administration of a psychotropic drug to the child in the service provider's care would cause the child or another person serious mental or physical harm, and

b. no less restrictive course of action would prevent the harm;

c. if the child is 16 years of age or more, the child apparently does not have capacity; and

d. if the child is less than 16 years of age, the child's parent or, where the child is in a society's lawful custody, the society, is not immediately available;

e. administration of the psychotropic drug in emergency situations does not continue beyond a 72-hour period without the consents of the child,

parent and society as required. Those consents are to be sought as soon as possible after the first administration of the psychotropic drug.

3. NON-THERAPEUTIC MEDICAL OR CHEMICAL EXPERIMENTATION, PSYCHOSURGERY, NON-THERAPEUTIC STERILIZATION OR ELECTRO-CONVULSIVE THERAPY C.F.S.A. s.127

It is the responsibility of the service provider to ensure that no child in the care of, or regularly receiving services from a service provider, undergo any of these procedures, unless:

a. three members of the interdisciplinary review team, established by the service provider, one of whom must be legally qualified medical practitioner, have reviewed the matter, and advised both the child's parent(s) (or the children's aid society, where the child is in the society's custody) and the service provider of the review team's opinion as to the appropriateness of the recommended procedure;

b. that no such procedure is carried out in premises where the approved service or service purchased by an approved agency is provided.

4. ESTABLISHMENT OF PROFESSIONAL ADVISORY BOARD TO ASSIST THE MINISTER C.F.S.A. s.128

The Child and Family Services Act authorizes the Minister to establish a Professional Advisory Board, composed of physicians and other professionals who have special knowledge about the use of intrusive procedures and psychotropic drugs, who have demonstrated an informed concern for child welfare and the interests of children, and are not employed by the Ministry, to perform the following functions:

a. advise the Minister regarding the regulation of procedures as intrusive procedures and making, amending, suspending or revoking approvals of service providers to use intrusive procedures;

b. investigate and review the use of intrusive procedures and psychotropic drugs and make recommendations to the Minister; and

c. review practices of service providers regarding secure isolation, intrusive procedures and psychotropic drugs and make recommendations to the Minister.

5. RIGHT TO REVIEW BY THE PROFESSIONAL ADVISORY BOARD

C.F.S.A. s.129

In addition, any person may ask the Minister to refer to the Professional Advisory Board the use of secure isolation, an intrusive procedure, or a psychotropic drug with regard to a specific child. The Board must then investigate and review the matter.

CARE OF CHILDREN IN LICENSED CHILDREN'S RESIDENCES

1. DEFINITION OF CHILDREN'S RESIDENCE

"Children's residence" under the new Act means:

a. a parent-model residence where 5 or more children not of common parentage live and receive residential care ("parent model" residence is defined as part or all of a building or group of buildings where not more than 2 adults live and provide care for children on a continual basis); or

b. a staff-model residence where 3 or more children not of common parentage live and receive residential care by adults employed on the basis of scheduled shifts ("staff model" residence is defined as part or all of a building where adults are employed to care for children on the basis of scheduled shifts).

Parent model or staff model residences supervised or operated by children's aid societies are not exempted, and thus require a licence issued under Part IX of the Act. The licence is issued by a Ministry director.

The licence specifies the maximum number of children for whom care may be provided by the licensee.

2. ADMISSION OF CHILDREN TO THE RESIDENCE

(1) Application for Admission

Every licensee shall ensure that each person who applies for admission of a child to a residence operated by the licensee is notified in writing within 21 days of the date of the application of the licensee's decision with respect to admission of the child to the residence. **O. Reg. 550/85, s.73(1)**

Where the licensee intends to admit the child, the licensee shall notify the applicant of the anticipated date of admission of the child.

O. Reg. 550/85, s.73(2)

Where the licensee is unable to notify the applicant of the decision with respect to admission within the 21 day period referred to, the licensee shall,

(a) advise the applicant in writing of the reasons for the delay; and

(b) notify the applicant of the licensee's decision with respect to admission as soon as possible in the circumstances. **O. Reg. 550/85, s.73(3)**

(2) The Written Agreement for Service to the Child

Every licensee shall ensure that a written agreement for the provision of service to a child is entered into with respect to each child that is admitted to a residence operated by the licensee. **O. Reg. 550/85, s.74(1)**

A written agreement for the provision of service to a child shall be entered into at the time of admission of the child to the residence or as soon as possible in the circumstances. **O. Reg. 550/85, s.74(2)**

An agreement for the provision of service to a child shall include,

(a) the consent and authorization for the licensee to,

  (i) provide care for the child,
  (ii) obtain emergency medical treatment for the child, and
  (iii) where applicable, inspect and obtain from persons named in the consent, records, reports and information concerning the child;

(b) financial arrangements with respect to the provision of care by the licensee for the child; and

(c) provision for a review of the agreement at the request of the child, a parent of the child or the society or other person placing the child or the licensee. **O. Reg. 550/85, s.74(3)**

Every licensee shall ensure that with respect to each agreement for the provision of service to a child that,

(a) the society or probation officer who is supervising or otherwise providing services to a child, but who is not a parent of the child;

(b) the society or other person placing the child; and

(c) the child, where the child is 12 years of age or over,

are consulted and involved in the development of the agreement.

O. Reg. 550/85, s.74(4)

Every licensee shall ensure that each agreement for the provision of service to a child entered into by the licensee is explained to the child, where the child is 12 years of age or over, in language that is suitable to the child's understanding, before the agreement is signed. **O. Reg. 550/85, s.74(5)**

Where possible the licensee shall, after explaining the agreement to the child, obtain a signed acknowledgement from the child that the agreement has been explained. **O. Reg. 550/85, s.74(6)**

An agreement for the provision of service to a child shall be signed by,

(a) the licensee;

(b) the parent of the child or the society or other person placing the child, unless the child is 16 years of age or over and signs the agreement himself;

(c) a children's aid society in whose care the child is where the child is in care under a temporary care or special needs agreement negotiated with the society;

(d) the child, where the child is 16 years of age or over, unless in the opinion of a physician or psychologist, the child is unable to sign the agreement because of a mental or physical handicap;

(e) the child's nearest relative, where the child is unable to sign and there is no parent; and

(f) where the agreement concerns a child who is a party to a temporary care agreement, the child. **O. Reg. 550/85, s.74(7)**

In any of the following circumstances, the reason shall be noted in the resident's case record:

(a) an agreement for the provision of service to a child is developed without the consultation and involvement of the society or probation officer supervising or otherwise providing service to the child, the society or other person placing the child, or the child 12 years of age or over;

(b) a person otherwise required to sign does not sign the agreement; or

(c) the child does not sign an acknowledgement that the agreement has been explained to the child. **O. Reg. 550/85, s.74(10)**

(3) Consent for Admission of the Child

Where an agreement for the provision of service to a child is not entered into, the licensee shall ensure that before a child is admitted to a residence operated by the licensee, the following documents are obtained:

1. a consent for admission of the child in accordance with section 27 of the Act; and

2. a consent and authorization for the licensee to secure all necessary emergency medical treatment for the child. **O. Reg. 550/85, s.75**

(4) Child's Orientation to the Residence and the Program

Every licensee shall ensure that, upon admission of a child to a residence operated by the licensee the child receives an orientation to the residence and the program provided in the residence and that the child is informed of the procedures that exist for a resident to express concerns or complaints while a resident. **O. Reg. 550/85, s.76**

(5) Medical Examination of the Child

Every licensee shall ensure that each child admitted to a residence operated by the licensee has had a general medical examination by a physician within 30 days prior to admission or has such an examination within 72 hours after admission. **O. Reg. 550/85, s.77(1)**

Where a resident has not had a general medical examination as set out above, the licensee shall note in the resident's case record the circumstances that delayed the examination and arrange for an examination as soon as possible in the circumstances. **O. Reg. 550/85, s.77(2)**

Where there are specific indications upon the admission of a child that suggest that either a medical examination or treatment is urgently required for the child, the licensee operating the residence where the child is admitted shall arrange for the examination or treatment forthwith. **O. Reg. 550/85, s.77(3)**

Where such medical examination or treatment cannot be arranged forthwith, the reason shall be noted in the resident's case record and the licensee shall arrange for the examination or treatment, as the case may be, as soon as possible in the circumstances. **O. Reg. 550/85, s.77(4)**

(6) Dental Examination of the Child

Every licensee shall ensure that each child admitted to a residence operated by the licensee has had a dental examination by a dentist within six months prior to admission to the residence or has had such an examination within 90 days after admission. **O. Reg. 550/85, s.77(5)**

Where a resident has not had a dental examination as set out above, the licensee shall note in the resident's case record the circumstances that delayed the examination and arrange for an examination as soon as possible in the circumstances. **O. Reg. 550/85, s.77(6)**

(7) Medical Needs at Time of Admission

Every licensee shall ensure that,

(a) upon admission of a child to a residence operated by the licensee it is determined whether or not the child being admitted is currently receiving medical treatment or medication or is suffering from any allergy or physical ailment; and

(b) where applicable, the treatment or medication referred to in clause (a) is continued. **O. Reg. 550/85, s.78**

3. PROGRAMMING

(1) The Written Plan for Care for each Resident

Every licensee shall develop or participate in the development of a written plan of care for each resident admitted to a residence operated by the licensee, within 30 days of admission of the resident. **O. Reg. 550/85, s.79(1)**

A plan of care for a resident shall include,

(a) a description of the resident's needs that is developed with reference to the findings of current or previous assessments of the resident;

(b) a statement of goals to be achieved for the resident while the resident is in the residence;

(c) a statement of the means to be used to achieve those goals;

(d) a statement of the educational program that is developed for the resident in consultation with the school boards in the area in which the residence is located;

(e) where applicable, a statement of the ways in which a parent of the resident will be involved in the plan of care including arrangements for contact between the resident and a parent of the resident and the resident's family;

(f) particulars of any specialized service to be provided directly or arranged for by the licensee;

(g) particulars of the dates for review of the plan of care;

(h) a list of revisions if any to the plan of care; and

(i) a statement of the anticipated plan for discharge of the resident.

O. Reg. 550/85, s.79(2)

This initial plan of care and particulars of any reviews of the plan of care shall be entered in the resident's case record. **O. Reg. 550/85, s.79(3)**

Every licensee shall ensure that, where possible, the following persons are consulted and involved with the development of each plan of care for each resident in a residence operated by the licensee:

(a) a parent of the resident or the person who placed the resident;

(b) any children's aid society or probation officer who is supervising or otherwise providing services to a child, but who is not a parent; and

(c) the resident, where the resident is 12 years of age or over.

O. Reg. 550/85, s.79(4)

Where the plan of care is developed without such consultation or involvement, the reason for the lack of consultation or involvement shall be noted in the resident's case record. **O. Reg. 550/85, s.79(5)**

(2) Review of the Plan for Care

Every licensee shall ensure that the development of each resident in each residence operated by the licensee in relation to the plan of care developed for the resident is reviewed at least every thirty days during the first 6 months that the resident is in the residence and at least every 6 months thereafter. **O. Reg. 550/85, s.79(6)**

A resident shall be given an opportunity to express his or her views during each review. **O. Reg. 550/85, s.79(7)**

Every licensee shall ensure that each plan of care with respect to each resident in a residence operated by the licensee is reviewed 6 months after the resident is admitted to the residence with,

(a) the resident;

(b) a parent of the resident; and

(c) any other person who is involved in the development of the plan of care within 3 months of the resident being admitted to the residence.

O. Reg. 550/85, s.79(8)

Where a review of a plan of care is requested by any person involved with the development of the plan of care, the review shall take place 6 months after the review referred to above. **O. Reg. 550/85, s.79(9)**

Where it is not possible to review the plan of care with each person referred to in section 79(8), the reasons for the lack of a review shall be noted in the resident's case record. **O. Reg. 550/85, s.79(10)**

(3) Consultation with Educational Resources

Every licensee shall consult at least annually with the school boards in the area in which each residence operated by the licensee is located for the purposes of identifying and utilizing the educational resources available for the residents. **O. Reg. 550/85, s.80(1)**

Where, in the opinion of a licensee, the severity of the behavioural, physical or emotional problems of a resident in a residence operated by the licensee is such that the resident is unable to attend a school in the area in which the residence is located, the licensee shall document the need for an educational program for the resident and shall consult with the appropriate director of education with respect to the provision of a program for the resident in accordance with the requirements of the Education Act and the Regulations under that Act. **O. Reg. 550/85, s.80(2)**

(4) Nutrition for Residents

Every licensee shall ensure that with respect to each residence operated by the licensee,

(a) the residents receive well balanced meals that are nutritionally adequate for their physical growth and development; and

(b) where special foods are recommended by a resident's physician, they are provided to the resident. **O. Reg. 550/85, s.81**

(5) Clothing for Residents

Every licensee shall ensure that each resident in a residence operated by the licensee has a supply of his or her own clothing of a suitable quality and size in relation to the resident's age and activities and local weather conditions.

O. Reg. 550/85, s.82(1)

Where clothing for an individual resident is limited because of the resident's need, the reason shall be noted in the resident's case record.

O. Reg. 550/85, s.82(2)

(6) Transfer or Discharge of a Child from the Residence

Every licensee shall ensure that prior to the transfer or discharge of a resident from a residence operated by the licensee, the resident is made aware of and understands, as far as possible, the reasons for the transfer or discharge. **O. Reg. 550/85, s.83(1)**

Where a resident is transferred to another residence or discharged from a residence, the licensee shall, as soon as possible thereafter, but within 30 days of the transfer or discharge, forward a summary of the resident's progress while in the residence including a summary of the plan of care and an assessment of the resident's needs at the time of transfer to the licensee of the residence to which the resident is transferred or to the person or agency to whom the resident is discharged. **O. Reg. 550/85, s.83(2)**

A copy of this summary shall be included in the resident's case record in the residence from which the resident was transferred or discharged.

O. Reg. 550/85, s.83(3)

4. MEDICAL AND DENTAL CARE OF RESIDENTS

Every licensee shall ensure that the written policies and procedures in each residence operated by the licensee with respect to the health program for residents provide for,

(a) resident access to community health programs;

(b) arrangements for a physician and dentist to advise the licensee on an ongoing basis about medical and dental care required by the residents;

(c) at least an annual assessment of the health, vision, dental and hearing condition of the residents;

(d) health education for the residents; and

(e) the carrying out of procedures recommended by a physician for the prevention and control of disease. **O. Reg. 550/85, s.84(1)**

Every licensee shall ensure that the services of a physician are provided for each resident in each residence operated by the licensee at regular intervals and as often as is needed by the resident. **O. Reg. 550/85, s.84(2)**

Every licensee shall ensure that, where it is proposed to administer a medical or dental treatment to a resident in a residence operated by the licensee that the proposed treatment is fully explained to the resident in lanugage suitable to the resident's age and understanding. **O. Reg. 550/85, s.84(3)**

Every licensee shall with respect to each resident in a residence operated by the licensee, maintain a cumulative record of each resident's medical and dental examinations and treatment while the resident is in the residence.

O. Reg. 550/85, s.84(4)

This cumulative record shall be kept in the resident's case record.

O. Reg. 550/85, s.84(5)

Every licensee shall ensure that with respect to each resident in each residence operated by the licensee,

(a) prescription medicines are administered to a resident only under the general supervision of the program staff of the residence and only when prescribed by a physician; and

(b) a record is kept of all medication given to each resident, including the type of medication, the period for which it is prescribed, when each dose is to be given and is given and by whom each dose is given.

O. Reg. 550/85, s.85(1)

This record shall be available to the prescribing physician upon request.

O. Reg. 550/85, s.85(2)

Every licensee shall provide lockable storage facilities in each residence operated by the licensee that shall be used for the medication of residents who are 16 years of age or over and, in the opinion of the licensee, are able to assume responsibility for self administration of medication and wish to assume that responsibility. **O. Reg. 550/85, s.85(3)**

This provision does not apply where the medication is self administered by a resident 16 years of age or over, as noted above. **O. Reg. 550/85, s.85(4)**

Where in the opinion of the physician a resident under 16 years of age will derive some benefit from the responsibility of administering the resident's own medication, a copy of the physician's written self-medication plan for that resident shall be kept in the resident's record. **O. Reg. 550/85, s.85(5)**

Every licensee shall ensure that each person in a residence operated by the licensee who suffers from a communicable disease and for whom isolation is considered necessary by a physician is isolated from other persons in the residence who have not been infected. **O. Reg. 550/85, s.86**

Every licensee shall ensure that each residence operated by the licensee is equipped with a first aid kit. **O. Reg. 550/85, s.87(1)**

The contents of the first aid kit shall be provided by the physician advising the licensee and the kit shall be kept in a location that is known and accessible to staff of the residence. **O. Reg. 550/85, s.87(2)**

5. DISCIPLINE, PUNISHMENT AND ISOLATION OF RESIDENTS

Every licensee shall ensure that the written policies and procedures in each residence operated by the licensee with respect to discipline, punishment and any isolation measures (methods of maintaining discipline) set out the practices that may be used by staff persons of the licensee and the practices that shall not be used by staff persons of the licensee.

O. Reg. 550/85, s.88(1)

The policies and procedures with respect to discipline, punishment and isolation measures shall be reviewed with each staff person of each residence when the staff person first receives orientation to the residence and at least annually thereafter. **O. Reg. 550/85, s.88(2)**

The licensee shall ensure that the staff persons and residents in each residence operated by the licensee are informed of the type of behaviour of a resident that will result in the use of disciplinary measures.

O. Reg. 550/85, s.88(3)

The licensee shall ensure no staff person in a residence operated by the licensee carries out any disciplinary procedure with respect to a resident unless the staff person has completed a training program with respect to the methods of discipline approved by the licensee. **O. Reg. 550/85, s.88(4)**

The licensee shall ensure that where a punishment is administered to a resident or other intervention that is intended to reduce or eliminate a behaviour of a resident is used with a resident the fact is recorded in the resident's case record by the person employing the punishment or intervention and that the licensee or a person designated by the licensee is informed of the application of the punishment or intervention. **O. Reg. 550/85, s.88(5)**

No licensee shall,

(a) use or permit the use of deliberate harsh or degrading measures to humiliate a resident or undermine a resident's self respect, or

(b) deprive or permit a person to deprive a resident of basic needs including food, shelter, clothing or bedding. **O. Reg. 550/85, s.89**

6. CONTRAVENTION OF POLICIES AND PRACTICES

Every licensee shall, with respect to each residence operated by the licensee, develop and maintain policies and procedures with respect to a contravention by a staff person of

1. the policies and practices of the residence, or

2. the prohibition against the use of deliberate harsh or degrading measures or deprivation of basic needs, or

3. the prohibition against corporal punishment of a resident.

O. Reg. 550/85, s.90(1)

The policies and procedures with respect to such contravention shall be reviewed with each staff person of each residence operated by the licensee when the staff person first receives orientation to the residence and at least annually thereafter. **O. Reg. 550/85, s.90(2)**

7. OPENING OF MAIL ADDRESSED TO A RESIDENT

Every licensee shall ensure that, where under subsection 99(3) of the Act, mail is opened or an article removed from mail to a resident who is in a residence operated by the licensee, the reason for opening the mail or removing the article is noted in the resident's case record. **O. Reg. 550/85, s.91**

8. CASE RECORDS AND REPORTS PERTAINING TO EACH RESIDENT

Every licensee shall maintain a written case record for each resident in a residence operated by the licensee that includes,

(a) the residents full name, sex and birthdate;

(b) the name, address and telephone number of the resident's parents or the society or other person placing the resident;

(c) any personal, family and social history and assessment that has been prepared by the licensee or provided to the licensee;

(d) the reason for admission of the resident;

(e) reports of all medical examinations and treatment given to the resident upon admission and while in the residence;

(f) where obtainable, any legal document that is concerned with the resident's admission to and stay in the residence including any consent to admission, treatment and release of information;

(g) a copy of the agreement for service with respect to the resident including any revisions to the agreement and particulars of any reviews of the agreement;

(h) school records and reports concerning the resident, where applicable;

(i) the plan of care developed for the resident and particulars of any review of the plan of care or of the resident's status;

(j) reports of any serious occurrence involving the resident;

(k) where applicable, documentation of the circumstances of transfer or discharge of the resident, the name, address and relationship of the person to whom the child is tranferred or discharged and the summary report of the resident's progress.

(l) in the case of a serious occurrence, the time of the occurrence, the name of the person reporting it and the person to whom the report was made; and

(m) such other information or documents with respect to the resident in addition to those referred to in clauses (a) to (l) as are considered appropriate by the licensee. **O. Reg. 550/85, s.92(1)**

A written case record of a resident shall be retained by the licensee for at least 20 years after the last entry in the record with respect to the resident or, where the resident dies, for at least 5 years after the death of the resident. **O. Reg. 550/85, s.92(2)**

9. REGISTER OF RESIDENTS

Every licensee shall maintain a register of residents in each residence operated by the licensee that includes,

(a) the name, sex, birthdate and wardship status of each resident;

(b) the name and address of the parents of each resident or other person placing the resident;

(c) the date of admission of the resident; and

(d) where the resident is discharged from the residence, the date of discharge of the resident and the name of the person or agency to whom the resident is discharged. **O. Reg. 550/85, s.93(1)**

10. REPORTING OF SERIOUS OCCURRENCES IN THE RESIDENCE

(1) Generally

Where,

(a) a resident dies;

(b) a resident is seriously injured;

(c) a resident is abused, mistreated or injured by a staff person in the residence or by the licensee;

(d) a complaint is made by or about a resident that is considered by the licensee to be of a serious nature;

(e) a resident resides in a residence operated by the licensee in which a fire or other disaster occurs; or

(f) in addition to the matters set out in clauses (a) to (e), a serious occurrence takes place concerning a resident,

the licensee shall within 24 hours of the occurrence report the occurrence to the following persons:

- a parent of the resident;
- where applicable, the person who placed the resident and who has been involved in the plan of care for the resident;
- where applicable, the society that placed the resident; and
- a director. **O. Reg. 550/85, s.95(1)**

(2) AWOL Residents

Where,

(a) a resident is absent from a residence operated by the licensee without permission for 24 hours or more; or

(b) a resident is absent from a residence operated by the licensee without permission for a period of less than 24 hours and the absence is considered by the licensee to be a serious matter,

the licensee shall forthwith report the absence to the following persons:

- a parent of the resident;
- where applicable, the person who placed the resident and who has been involved in the plan of care for the resident;
- where applicable, the society that placed the resident; and
- the local police having jurisdiction in the area where the residence is located.

CARE OF CHILDREN IN FOSTER HOMES

O. Reg. 550/85

1. APPLICABILITY

The regulations that follow apply to the provision of residential care directly or indirectly for 3 or more children not of common parentage in a foster home.

2. PRELIMINARY ASSESSMENT OF CHILD AND OBJECTIVES OF FOSTER CARE

Every licensee shall ensure that before a child is accepted by the licensee to receive foster care in a home that provides foster care for or on behalf of the licensee that,

(a) the child is given a preliminary assessment that sets out,

- (i) the immediate needs of the child,
- (ii) whether the child is likely to be returned to his or her home,
- (iii) available identifying information concerning the child,
- (iv) the child's legal status, and
- (v) any other information that in the opinion of the licensee is relevant to the immediate care of the child; and

(b) the immediate objectives of the provision of foster care for the child have been determined, taking into account the developmental, emotional, social, medical and educational needs of the child.

O. Reg. 550/85, s.104(1)

3. POST ADMISSION ASSESSMENT

Every placing agency shall complete an assessment of each child that it places in foster care within 21 days of the child being placed in a foster home.

O. Reg. 550/85, s.104(2)

This assessment shall set out,

(a) the special needs of the child;

(b) the child's legal status;

(c) available identifying information concerning the child;

(d) the child's family history, and

(e) the circumstances necessitating out of home care for the child.

O. Reg. 550/85, s.104(3)

4. 30-DAY REVIEW AND DEVELOPMENT OF FOSTER CARE PLAN

The licensee shall,

(a) review the assessment; and

(b) participate with the foster parents in the finalization of a foster care plan,

within 30 days after placement of the child in a foster home.

O. Reg. 550/85, s.104(4)

5. CONSULTATION REGARDING THE FOSTER CARE PLAN

The licensee shall consult with the placing agency, where the placing agency is not the licensee, and the foster parents to ensure that as part of the foster care plan,

(a) where the child is developmentally, physically or learning handicapped or is emotionally disturbed and is not already receiving remedial instruction or treatment to meet the child's needs, that the child receives an evaluation and treatment and consultation as is required in the circumstances;

(b) where the child is developmentally handicapped, that the child receives an individual program plan;

(c) where the child is a physically handicapped child, that the child is provided with a specific plan that is designed with the overall goal of moving the child towards being independent with respect to life skills and that contains time-limited measurable objectives; and

(d) where the child is emotionally disturbed, that a plan is developed for the supervision of the child and the child's foster parents that states the methods to be used and the supports to be provided to the foster parents in managing and caring for the child. **O. Reg. 550/85, s.104(5)**

6. CONDITIONS PRECEDENT TO PLACEMENT OF THE CHILD IN THE FOSTER HOME

No licensee shall select a placement for a child in a foster home or place a child in a foster home unless the licensee,

(a) completes an assessment of the family and approves the family to provide foster care;

(b) discloses to the foster parents in accordance with section 164, 165 or 166 of the Act, all information known to the licensee about the child that is relevant to the care of the child; and

(c) obtains the agreement of,

(i) the foster parents, on the basis of the information provided in clause (b), and

(ii) the placing agency where the placing agency is not the licensee,

to the placement. **O. Reg. 550/85, s.105**

Every licensee that places or intends to place a child in foster care shall ensure that a written record of,

(a) any needs of the child that cannot be met by placement in the foster home;

(b) how the needs of the child will be met; and

(c) any reservations or concerns expressed by the foster parents about the placement of the child in the foster home,

is included in the child's file. **O. Reg. 550/85, s.106**

Every licensee or placing agency that places a child in foster care shall,

(a) arrange for a person known to the child to accompany the child to the foster home on the date of the actual placement, unless the licensee placing agency or a person designated by the licensee approves an adult other than one known to the child to accompany the child;

(b) ensure that the foster parents receive the health, medical and dental data necessary for the care of the child, including specification of any medical disorders, handicaps, allergies or limitations on activity.

O. Reg. 550/85, s.107(1)(2)

The licensee or placing agency shall ensure that the data noted above are given in writing in accordance with sections 164, 164 and 166 of the Act at the time of the actual placement of the child in the foster home.

O. Reg. 550/85, s.107(3)

7. REVIEW OF FOSTER CARE PLAN

Every licensee shall review and if necessary amend the foster care plan for each child it places in foster care. **O. Reg. 550/85, s.108(1)**

This review shall be carried out with the involvement of the placing agency, where the placing agency is not the licensee, the child, the foster parents and the child's parents,

(a) at least every 3 months; and

(b) when there is a change in the child's placement. **O. Reg. 550/85, s.108(2)**

The date of each review and any changes in the foster care plan shall be recorded in the child's file. **O. Reg. 550/85, s.108(3)**

A supervisor shall examine the child's file at the time of each review to ensure that the required recording and documentation have been carried out and shall sign and date the record. **O. Reg. 550/85, s.108(4)**

Where a foster care plan is reviewed without the involvement of one of the persons referred to above, the reason shall be noted in the child's file.
O. Reg. 550/85, s.108(5)

CARE OF CHILDREN BY CHILDREN'S AID SOCIETIES

1. RESPONSIBILITIES TO SOCIETY AND CROWN WARDS

C.F.S.A. s.57

Where a child is removed from the care of his parents, and children's aid society care substituted for that of the child's family, the community at large requires a high degree of accountability for this action.

The Child and Family Services Act expands provisions of predecessor legislation to emphasize that basic premise of child welfare law and practice, and entrusts a children's aid society with the certain specific responsibilities for society and Crown wards.

(1) Appropriate Choice of Residential Placement — C.F.S.A. s.57(2)

The Child and Family Services Act requires the society responsible for a society or Crown ward to choose a residential placement for the child that:

a. represents the least restrictive alternative for the child that is appropriate and available;

b. respects, where possible, the religious faith, if any, in which the child is being raised;

c. respects, where possible, the child's linguistic and cultural heritage;

d. where the child is an Indian or native person, the placement is with a member of the child's extended family, a member of the child's band or native community or another Indian or native family, if possible; and

e. takes into account the child's wishes, if they can be reasonably ascertained, and the wishes of any parent who is entitled to access to the child.

(2) Appropriate Education **C.F.S.A. s.57(3)**

It continues to be the responsibility of the society having care of the child to ensure that the child receives an education that corresponds to his aptitudes and abilities. This duty is shared with the board of education which has jurisdiction in the area where the child resides, as dictated by the Education Act.

(3) Respect for the Child's Rights **C.F.S.A. s.57(5)(a)**

Under the Child and Family Services Act the society having care of the child must ensure that the society or Crown ward is afforded the rights given to children by Part V of the new Act.

(4) Parent and Foster Parent Input in Major Decisions Concerning the Child
C.F.S.A. s.57(5)(b)

The Child and Family Services Act requires the society having care of the child, in any major decision concerning him, to ensure that it takes into account:

a. the wishes of any parent who is entitled to access, and

b. where the child is a Crown ward, the wishes of any foster parent with whom the child has lived continuously for 2 years.

What constitutes a "major" decision for a particular child is not defined by the Act. It will depend on the circumstances of the case. Suggested inclusions in the "major decision" category are issues concerning change in placement, arrangements for access, education, religion, etc.

Taking a person's wishes into account is not to be interpreted as a right given to these individuals to make or control the decision. However, it does mean listening to what the parent or foster parent has to say about the issue under discussion and considering their particular opinion in the society's decision.

(5) Discretion to Move a Child to Another Placement **C.F.S.A. s.57(6)**

The Child and Family Services Act preserves the society's discretion to remove a society or Crown ward from a particular foster home or other residential placement where, in the opinion of either the society's local director or a Ministry director, it is in the child's best interests to do so. The new legislation imposes, however, certain restrictions on the child's removal that are set out below:

Ministry Director's Consent to Out-of-Province Placement **C.F.S.A. s.57(4)**

As in predecessor legislation, any permanent removal of the child outside Ontario requires the consent of a Ministry director. The Ministry director must be satisfied that extraordinary circumstances justify the child's removal from the province.

Residential Placement Advisory Committee Review **C.F.S.A. s.57(10)**

The child's removal from the province is subject to those provisions of the new legislation that permit review of a child's placement at the discretion of the Residential Placement Advisory Committee.

(6) Indian and Native Children - Preservation of their Cultural Identity
C.F.S.A. s.37(4)

Where the child is an Indian or native person, the society must take into consideration the importance of preserving the child's cultural identity, in recognition of the uniqueness of Indian and native culture, heritage and traditions.

2. SOCIETY'S RIGHTS AND RESPONSIBILITIES SPECIFIC TO SOCIETY WARDS

(1) Care, Custody and Control **C.F.S.A. s.59(2)**

As specified in by predecessor legislation, the children's aid society continues under the Child and Family Services Act to have the rights and responsibilities of a parent for the purpose of care, custody and control of the society ward.

(2) Consent to Medical Treatment **C.F.S.A. ss.58; 37(3)(4)**

The Child and Family Services Act makes clear, where predecessor legislation did not, that the society may consent to and authorize medical treatment for a society ward where a parent's consent would otherwise be required, unless the child protection court has reserved that right to the parent. The Act prohibits the court from making any such order where a failure to consent to necessary medical treatment was a ground for finding that the child was in need of protection.

If the court has reserved the right to consent to medical treatment to the parent, and the parent subsequently refuses, is unavailable or is unable to consent, the society may make application to the child protection court to vary the order. The court must be satisfied that the anticipated treatment would be in the child's best interests. If the child is an Indian or native person, the new Act requires the court to take into consideration the importance of preserving the child's cultural identity, in recognition of the uniqueness of Indian and native culture, heritage and traditions. If so satisfied the court may remove the condition from the existing order, thus enabling the society to give consent to the medical treatment.

(3) Prohibition Against Consent to Marriage of the Society Ward
C.F.S.A. s.58(4)

Notwithstanding the custodial responsibilities of the society, it is the parent of the society ward who retains the right to give or refuse consent to the child's marriage, as that consent is required for minors under the Marriage Act.

3. SOCIETY'S RIGHTS AND RESPONSIBILITIES SPECIFIC TO CROWN WARDS

(1) Exercise of the Crown's Responsibilities **C.F.S.A. s.59(1)**
O. Reg. 550/85

As in predecessor legislation, the Crown has the rights and responsibilities of a parent for the purpose of the Crown ward's care, custody and control. The

Crown's powers, duties and obligations with respect to the Crown ward are to be exercised by the society caring for the child, except those powers reserved for a Ministry director by the new legislation and its regulations.

In addition to the powers and duties that a director has under the Act, a director is empowered by the regulations,

a. in respect of a Crown ward, to consent to,

   (i) the issuance of a passport in the name of a Crown ward who is under 16 years of age, and
   (ii) travel outside of Canada by a Crown ward unless the director requires the consent to be given by the local director of the society having care of the Crown ward;

b. to extend the period of time within which a report shall be made to a director under subsection 2(2) of Ontario Regulation 550/85 (General).

O. Reg. 550/85, s.30(1)

(2) Consent to Medical Treatment **C.F.S.A. s.59(1)**

The Crown is entitled to give or refuse consent to medical treatment for the Crown ward where a parent's consent would otherwise be required.

4. SPECIFIC SERVICES TO BE PROVIDED TO CHILDREN IN CARE

O. Reg. 551/85

Regulation under the Child and Family Services Act requires the following:

(1) Medical and Dental Care **O. Reg. 551/85, s.4(1)(2)(3)(4)**

- Every society shall ensure that each child in care of the society is given a medical and dental examination as soon as is practical after the admission of the child to care.

- Every society shall ensure that each child who is in care of the society is given a medical examination and dental examination at least once a year.

- Every society shall keep a record of each medical examination and dental examination of each child admitted into care by the society.

- Every society shall ensure that the treatment recommended as a result of a medical examination or dental examination of a child admitted into care by the society is carried out within the times recommended.

Psychological and psychiatric assessment or treatment

O. Reg. 551/85, s.4(5)(6)

- Psychological and psychiatric assessments or treatment or both shall be provided for each child in the care of a society in accordance with the needs of the child where the society is of the opinion that the behaviour or condition of the child indicates that an assessment or treatment or both is necessary in the circumstances and is available.

- The results of each assessment and treatment carried out shall be recorded by the society.

(2) Preplacement Visits **O. Reg. 551/85, s.5(1)(2)**

- No society that admits a child into care shall place the child in a foster home or other home unless the child has previously visited the home at least 10 days before placement.

- This does not apply where it is not practical in the circumstances to have the child visit the home at least 10 days before the placement.

(3) Postplacement Visits by Social Worker **O. Reg. 551/85, s.5(3)**

- Every society shall ensure that each child placed in a foster home or other home by the society is visited by a social worker,

  (a) within 7 days after the child's admission to the home;

  (b) at least once within 30 days of the placement; and

(c) at least once every 3 months after the visit referred to in clause (b) or such interval as the local director directs.

5. FOSTER PARENT RIGHT TO REVIEW OF DECISION TO RE-PLACE A CROWN WARD C.F.S.A. ss.57(6)(7)(8)(9); 37(3)(4)

(1) The Process

The Child and Family Services Act preserves the authority of a children's aid society to remove a child from a foster home or residential placement where, in the opinion of the society or a Ministry director, it is in the child's best interests to do so. If the child is an Indian or a native person, the society or Ministry director, as the case may be, is required to take into accord in formulating its opinion, the importance of maintaining the child's cultural identity, in recognition of the uniqueness of Indian and native culture, heritage and traditions.

If the child is a Crown ward who has lived with the particular foster parent for 2 continuous years, the Child and Family Services Act entitles the foster parent to a review of the society's decision to move the child. Unless in the opinion of the society's local director or alternatively, a Ministry director, there would be a substantial risk to the child's health or safety during the time necessary for such review, the society's responsibility is as follows:

a. to give the foster parent at least 10 days' notice of its decision to move the child from the home;

b. if the foster parent requests a review within 10 days of receiving the notice, to keep the proposed placement change "on hold", until the completion of this review and any further review by a Ministry director, if the foster parent seeks that;

c. to undertake the review according to the society's internal complaint procedure;

d. to alert the foster parent, if not satisfied by the society's review, including the response of its board of directors, to the right to further review by a Ministry director.

The final decision rests with the society's board of directors, if the foster parent does not request further review by a Ministry director. If the foster parent has requested a review by the Ministry director, the final decision rests with the Ministry director. This right to review represents legislative recognition of the long-term foster parent.

(2) Emergency Removal of the Crown Ward

C.F.S.A. s.57(9)

If in the opinion of either the society's local director or a Ministry director, there would be a substantial risk to the child's health or safety if he were left in the foster home pending completion of the review process, the society has the right to remove the child immediately.

The review to which the foster parent is entitled is then undertaken after the child's removal.

(3) Foster Parent's Right to Request an RPAC Review

C.F.S.A. ss.34(8); 57(10)

The foster parent is also a person entitled by the Child and Family Services Act to request a review of the child's existing or proposed placement by the Residential Placement Advisory Committee. It is in the discretion of the RPAC whether to undertake such a review.

6. CONSULTATION WITH INDIAN BANDS AND NATIVE COMMUNITIES

C.F.S.A. s.196

It is a requirement of the Child and Family Services Act that agencies and children's aid societies that provide services or exercise powers under the Act with respect to Indian or native children regularly consult with the bands or native communities to which those children are affiliated about the provision of the services, the exercise of powers of the society or agency in relation to these children and about matters affecting the children. This includes:

a. the apprehension of children and the placement of children in residential care;

b. the placement of homemakers and the provision of other family support services;

c. the preparation of plans for the care of children;

d. status reviews under Part III (Child Protection) of the Act;

e. temporary care and special needs agreements under Part II (Voluntary Access to Services) of the Act;

f. adoption placements (30 days written notice is required);

g. the establishment of emergency houses; and

h. any other matter that is prescribed by regulation under the Act.

RESIDENTIAL PLACEMENT ADVISORY COMMITTEES

1. GENERALLY — C.F.S.A. s.34(2)

The proclamation of sections 34-36 of the Act on January 1, 1986 introduces a review mechanism to monitor certain placements of children in residential care, to be undertaken by a body known as the Residential Placement Advisory Committee.

A Residential Placement Advisory Committee is established by the Minister and composed of:

a. persons engaged in providing services;

b. other persons who have demonstrated an informed concern for the welfare of children;

c. one representative of the Ministry; and

d. if the Minister wishes, another person or persons, including a representative of a band or native community, whom the Minister considers appropriate.

The territorial jurisdiction of each committee is established by the Minister.

Committee members will apply their informed concern to promote the best interests, protection and well-being of the child. The members who are band or native community representatives will bring their special insights to bear for Indian and native children. The Ministry will request bands and native communities to select appropriate candidates for possible appointment to the local RPAC. Special consideration will be given to the appointment of representatives of bands and native communities to be members of those committees most likely to deal with placements of Indian children or native children. It is expected that when a placement involving an Indian or native child is reviewed, the RPAC will include a representative of a band or native community, if at all possible. It is also the Ministry's intention that all RPAC's will, wherever possible, include a member of native descent when

they review placement of a child who is of native descent but neither a member of a band nor a native community.

2. THE COMMITTEE'S RESPONSIBILITIES C.F.S.A. s.34(4)(6)

The Child and Family Services Act entrusts each committee with the following duties:

a. to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential services and alternatives to residential service;

b. to conduct the reviews;

c. to review or re-review at anytime, on its own initiative, at a person's request, or at the request of the Minister, an existing or proposed residential placement of a child;

d. in consultation with the children's aid society caring for a child under the authority of an agreement, to name a person to maintain contact with and be involved in the child's case, if the person who had custody does not do so; **C.F.S.A. s.29(a)**

e. such further duties prescribed by the regulations;

f. to report its activities to the Minister, whenever the Minister requests.

3. PLACEMENTS THE COMMITTEE IS REQUIRED TO REVIEW

(1) Placements in an Institution Intended to Last or Actually Lasting 90 Days or Longer C.F.S.A. ss.26(6); 34(5)

An institution is defined as:

a. a children's residence that has the capacity to provide residential service to 10 or more children at a time; or

b. a part of a building or a group of buildings sharing common grounds or premises that has a residential service capacity for 10 or more children at a time and has been designated as an institution by a Ministry director for the purposes of placement review.

The review of a child's placement in an institution is to be undertaken as soon as possible after the child is admitted into residence and in any event within 45 days of admission into the institution, and thereafter at least once every 9 months.

At the time of proclamation, placements of children already residing in an institution as defined by the Act, must be reviewed by an advisory committee within 12 months of the establishment of the committee or within such longer period as the Minister allows.

(2) Placements Referred to RPAC by the Minister **C.F.S.A. s.34(6)(c)**

A review is required for any existing or proposed placement of a child referred to a committee by the Minister, regardless of the capacity of the residential service (i.e. even if it is not an institution as defined by the Act). The committee must undertake that review within 30 days of the referral.

(3) Child 12 or Older Objecting to Residential Placement **C.F.S.A. s.34(6)(b)**

The Child and Family Services Act gives the child 12 or over, who after the Act has been proclaimed, objects to his placement in residential care, a right to have the placement reviewed by a Residential Placement Advisory Committee. This entitlement to review is a right given to each child in care, including children residing in foster homes, provided that the child is 12 years of age and over. An advisory committee must review any residential placement to which a child aged 12 or older objects, regardless of the capacity of the residential service (i.e. even if it is not an "institution" as defined by the Act). The review is to take place between 14-21 days of the child's placement.

4. PLACEMENTS EXEMPTED **C.F.S.A. s.34(1)**

The following placements are excluded from a review:

a. placements made under Part IV (Young Offenders);

b. placements in secure treatment programs under Part VI (Extraordinary Measures); and

c. placements with persons who are neither service providers nor foster parents.

d. maternity homes.

5. ESSENTIALS OF THE REVIEW — C.F.S.A. s.34(9)

The review is to be informal, conducted in the absence of the public, and with the assistance and cooperation of the service provider.

The advisory committee may in the course of its review, inform itself by any or all of the following means:

a. interview the child, members of the child's family and any representatives of the child and family;

b. interview persons engaged in providing services and other persons who may have an interest in the matter or may have information that would assist the advisory commmittee;

c. examine documents and reports that are presented to the committee; and

d. examine records of the child and of members of the child's family, that are disclosed to the committee in accordance with that Part VIII of the Act, Confidentiality of and Access to Records.

6. THE REVIEW COMMITTEE'S TASKS — C.F.S.A s.34(11)

The task of the committee is to:

a. determine whether the child has a special need;

b. consider what programs are available for the child in the residential placement or proposed residential placement, and whether a program available to the child is likely to benefit him;

c. consider whether the residential placement or proposed residential placement is appropriate for the child in the circumstances;

d. if it considers that a less restrictive alternative to the placement would be more appropriate for the child in the circumstances, specify that alternative;

e. consider the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity; and

f. where the child is an Indian or native person, consider the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity.

The Ministry will advise all RPAC's to obtain input from informed persons of native descent to ensure that the intent of the above provision is extended to all children of native descent, whether or not they are Indian or native persons as defined in the Child and Family Services Act.

7. DISTRIBUTION OF THE COMMITTEE'S RECOMMENDATIONS

C.S.F.A. s.35(1)

The committee's recommendations must be shared with the following persons:

a. the child, where it is reasonable to expect him to understand;

b. the service provider;

c. any representative of the child;

d. the child's parent or a children's aid society where the child is in the custody of the society; and

e. if the child is an Indian or native child, a representative chosen by the child's band or native community.

If the committee considers that a less restrictive service would be more appropriate for a child, that particular service recommended is to be specified in the committee's report. Within 30 days of the review, the committee must also report its findings and recommendations to the Minister.

8. FURTHER REVIEW BY CHILDREN'S SERVICES REVIEW BOARD

C.F.S.A. s.36

If the child over age 12 is dissatisfied with the recommendations of the advisory committee, he may apply to the Children's Services Review Board for further review. The child 12 or over may also invoke this review if the advisory committee's recommendations are not followed. This can be a more formal review.

The Board must conduct a review with respect to the child's application for further review and must advise the child within 10 days of receiving the child's request whether it intends to hold a formal hearing. If it intends to hold a hearing the following persons are parties:

a. the child;

b. the child's parent or alternatively, the children's aid society if the child is in the custody of the society;

c. if the child is an Indian or native child, a representative chosen by the child's band or native community; and

d. any other person the Board specifies.

Where the child is of native descent but not a member of a band or native community under the Act, the Children's Services Review Board will be expected to seek input from appropriate persons of native descent, if possible.

DISCLOSURE OF AND ACCESS TO RECORDS UNDER THE CONTROL OF A SERVICE PROVIDER

C.F.S.A. s.162

1. GENERALLY

The making, handling, maintenance and disclosure of records containing personal information is an important component of the provision of services to children and families. Part VIII of the Child and Family Services Act, which is yet to be proclaimed, recognizes the role that such information plays in service delivery and seeks to balance:

a. a service provider's need to transfer or disclose information in the interests of protecting a child or providing service to a child or family;

b. the rights of privacy which safeguard and enhance the integrity and autonomy of families and individuals;

c. the need to have access to information about oneself in order to participate meaningfully in decision-making.

Part VIII provides the permitted means of allowing the person who is the subject of a service provider's record, access to the information contained in it; and the permitted means of disclosing information contained in the record to other persons and agencies.

Information recorded prior to the proclamation of Part VIII is not subject to these provisions. Similarly, information contained in files which are closed when Part VIII is proclaimed is not subject to the Part VIII rules governing access and disclosure. **C.F.S.A. s.163(1)**

2. PROTECTION FROM CIVIL LIABILITY **C.F.S.A. s.173**

The service provider who complies with the disclosure provisions of Part VIII is protected from civil liability. The Child and Family Services Act specifically provides that no action or civil proceeding can be instituted

against the service provider or anyone acting under his authority if he gives access to or discloses information in accordance with Part VIII of the Act, and the service provider believes on reasonable grounds that the information contained in the record is accurate.

3. RECORDS EXEMPT FROM PART VIII — C.F.S.A. s.163

Certain kinds of information or records are exempted from Part VIII, either because disclosure is addressed elsewhere in the Child and Family Services Act or because disclosure is governed by separate legislation:

- a record that a child protection court orders produced to a Ministry director or a children's aid society because it contains information that may be relevant to a consideration of whether a child is or is likely to be abused. Access to this information is governed by Part III of the Child and Family Services Act; **C.F.S.A. ss.70(3) & 163(2)(a)**

- recorded information contained in the Ministry's child abuse register. Access to this information is governed by Part III of the Child and Family Services Act; **C.F.S.A. ss.163(2)(b) & 71(5)**

- recorded information that relates to a child's adoption. Access to this information is governed by Part VII of the Child and Family Services Act; **C.F.S.A. ss.163(2)(c)**

- information recorded in the Ministry's adoption disclosure register. Access to this information is governed by Part VII of the Child and Family Services Act; **C.F.S.A. s.163(2)(d)**

- recorded information that relates to a patient, and the disclosure of which, without that patient's consent, would contravene regulations made under Ontario's Health Disciplines Act. Access to this information is governed by the Health Disciplines Act; **C.F.S.A. s.163(2)(e)**

- information that constitutes a clinical record within the meaning of Ontario's Mental Health Act, (i.e. part or all of a clinical record compiled in a psychiatric facility in respect of a patient, former patient,

outpatient or former outpatient). Access to this information is governed by the Mental Health Act; **C.F.S.A. s.163(2)(f); M.H.A. s.29(1)**

- recorded information that is a medical record kept by a hospital governed by Ontario's Public Hospitals Act. Access to this information is governed by the Public Hospitals Act; **C.F.S.A. s.163(2)(g)**

4. WHAT CONSTITUTES A RECORD **C.F.S.A. s.162(a)(b)**

A "record", for the purpose of the disclosure and access provisions in Part VIII, is defined as:

- information that is recorded; that is, reduced to some permanent form, whether by mechanical or electronic means;

- information that is recorded in connection with services provided by or on behalf of a service provider who is subject to the provisions of Part VIII;

- information that is under the control of the service provider, that is, the information must be recorded, in use, or otherwise in the possession of the service provider.

- information that concerns or identifies a particular person. The Child and Family Services Act does not require that person to be the recipient of the service. Part VIII gives a person a right to access information in a service provider's file that relates to the person, even though he or she is not the recipient of the service. For example, where the recipient of the service identifies or discusses a spouse, the spouse may access information that relates to him or her;

- information that results from the provision of service either to the person to whom rights are accorded by the Child and Family Services Act or to a member of his or her family. "Family" means the person's parents and children and the person's spouse as defined by Part II of the Family Law Reform Act.

5. DISCLOSURE OF INFORMATION TO PERSONS WHO ARE NOT THEMSELVES RECIPIENTS OF THE SERVICE C.F.S.A. s.164

(1) Generally

Disclosure under Part VIII is essentially the sharing of information or the transfer of a record to someone other than the subject of the information or the recipient of services.

The interest protected by the disclosure provisions is the privacy of the individual. It begins with the goal of ensuring that personal information recorded by a service provider is private and confidential, and that the subject of the record be informed of and have the right to consent to or refuse disclosure of such information to third parties. However, a right to total privacy is neither practical nor necessarily desirable. Such situations are primarily administrative in nature, necessary to the proper provision of services to the subject of the information, or of an emergency nature where privacy interests must defer to considerations of safety.

(2) The Requirement of Consent to Disclosure C.F.S.A. s.164(1)

Part VIII of the Act requires the written consent of the person who is the subject of the information contained in the service provider's record, unless the Child and Family Services Act specifically permits disclosure without that consent. Note the following:

a. Information recorded in relation to a child under 16 years of age: A service provider may disclose to a third party the record of a child under 16 years of age with the written consent of the child's parent. If the child is in the lawful custody of a children's aid society, the consent of the society is sufficient. If, however, the record is made as the result of a request for counselling initiated by a child 12 years of age and over, the child's written consent is required.

b. Information recorded in relation to a person over age 16: The written consent of the person is required.

c. Counselling record of a child 12 years of age and over: Written consent of the child is required if the record has been made as a reuslt of the child's request for counselling.

6. PERSONS TO WHOM DISCLOSURE MUST BE GIVEN WITHOUT CONSENT

(1) Ministry Personnel — C.F.S.A. s.166(3)(4)

The service provider must give a Ministry program supervisor or director access to a person's record at the request of the program supervisor or director. No consent is required in these circumstances. The program supervisor or director may use or communicate the information only for purposes within the scope of their duties.

(2) Persons Entitled by Court Order — C.F.S.A. s.164(2)(a)(ii)

A service provider must give access to any information that a court orders disclosed to a specified individual.

(3) Disclosure at the Service Provider's Discretion — C.F.S.A. s.166

No consent is require to the following disclosure:

a. to persons providing approved services as employees or agents of the service provider. **C.F.S.A. s.166(2)(a)**

This includes staff of the service provider directly engaged in services to the subject of the record or persons from whom services for the subject of the record are being purchased.

These are frequently the persons who have contributed to the creation of the record and who are involved with the service recipient on an ongoing basis and to whom adequate information upon which decisions for care are based, must be freely available;

b. to a foster parent, if the "person" affected is a child in the foster parent's care. **C.F.S.A. s.166(1)(b)**

Where foster parents are caring for a child on behalf of a service provider it is essential that they be made aware of information which may be critical to the child's health or protection.

c. to employees, officers and professional advisors of the service provider who require access to the person's record for the performance of their duties. **C.F.S.A. s.166(1)(c)**

This provision may involve employees who are not involved in direct care to the child but who, within the scope of their duties, handle records, (e.g.; records' clerks, librarians, officers engaged in the management of the business affairs of the service providers, or professional advisors such as lawyers or accountants who require the information in order to adequately discharge their responsibilities);

d. to a children's aid society, if the "person" affected is a child in the society's care under an order of a child protection court, or a temporary care or special needs agreement (unless the agreement provides otherwise). **C.F.S.A. s.166(1)(d)**

"Lawful custody" includes special needs agreements and agreements for temporary care unless the agreement reserves the right to consent to the parent or another person, an order of temporary care and custody, or an order of society or Crown wardship;

e. to a peace officer (which includes a police officer), if the service provider has reasonable grounds to believe that, failure to disclose the person's record is likely to cause the person or another person physical or emotional harm, and the need for disclosure is urgent.

This provision speaks to the situation where the need for the disclosure is so urgent or immediate that the time required to obtain the consent would create immediate risk of the harm.

The Child and Family Services Act requires the service provider in these circumstances to give prompt and written notice of the disclosure to the person whose record was disclosed. In a non-emergency situation, however, disclosure to the peace officer is treated as disclosure in the ordinary course of events. **C.F.S.A. s.166(1)(3); (5)**

f. to a person who is providing medical treatment to the person affected, if the service provider believes on reasonable grounds that failure to disclose the record is likely to cause the person physical or emotional harm, and the need for disclosure is urgent.

The Child and Family Services Act requires the service provider in these circumstances to give prompt and written notice of the disclosure to the person whose record was disclosed. In non-emergency situations, disclosure to a person providing medical treatment is treated as disclosure in the ordinary course of events; **C.F.S.A. s.166(1)(f); (5)**

g. to a review team established by a children's aid society for the purpose of planning for a child who has been abused. **C.F.S.A. ss.166(1)(g); 69**

h. to a researcher who has a Ministry director's consent. The researcher is permitted to use or communicate the information only for research purposes and in no manner that would tend to identify the subject of the record.

Disclosure to any of the aforementioned persons is in the discretion of the service provider.

The service provider may also share information if disclosure is required or permitted by another statute or a regulation made under another statute. In this case, the provisions of the other statute govern the extent and means of disclosure. **C.F.S.A. s.164(2)**

7. CRITERIA GOVERNING CONSENT

A consent to the disclosure of records must be in writing and must specify:

a. the information to be disclosed. This may encompass authority to disclose an entire record or alternatively, specification of the part or parts of the record that may be disclosed. Any information not so specified may not be disclosed by the service provider;

b. the purpose of the disclosure. This element ensures that the person who is the subject of the record is informed of the reason and need for disclosure. It also ensures that the service provider himself has considered the need and reasons for disclosure;

c. the person to whom the record is to be disclosed. This addresses the specific purpose of the disclosure and consent discourages blanket disclosure of information;

d. further disclosure by the person referred to in (c) and the purpose of the disclosure. This allows the person giving consent to control the range of potential recipients and to be informed of the intended use of the information;

e. the period of time during which the consent is operative. This element ensures that information will be transferred within a specified time period.

The consent must also meet the following criteria of section 4 of the Act designed to ensure that the consent is valid and safe to be acted upon:

a. the person must have capacity — i.e. the ability to understand and appreciate the nature of the consent and the consequences of giving, withholding or revoking it;

b. the person must be reasonably informed as to the nature and consequences of the consent and of alternatives to it;

c. the person gives or revokes the consent voluntarily, without coercion or undue influence; and

d. the person has had a reasonable opportunity to obtain independent advice.

If it has been determined on the basis of an assessment not more than 1 year old that the person whose consent is required does not have capacity, that person's nearest relative may act.

The "nearest relative" of a person under the age of 18 years means a person with lawful custody.

The "nearest relative" of a person over the age of 18 years means:

a. a spouse, of any age;

b. if the individual has no spouse, or if the spouse is not available, the service provider looks to any child of the person, provided the child is over age eighteen;

c. if the individual has no child or if none is available, the service provider looks to any parent of the person, or a guardian;

d. if the individual has no parent or guardian or if neither is available, the service provider looks to any brother or sister of the person, provided the brother or sister is over age eighteen;

e. if the individual has no brother or sister or if none is available, the service provider looks to any other next of kin over age eighteen.

8. REVOCATION OF A CONSENT TO DISCLOSURE C.F.S.A. s.165(5)

The Child and Family Services Act allows a person to revoke his consent. The revocation may be given

a. orally, e.g. in person or by telephone communication with the service provider, or

b. in writing and delivered to the service provider.

The service provider may continue to act on the faith of the consent until he has actual notice that the consent has been revoked.

9. ACCESS BY THE PERSON WHO IS THE SUBJECT OF THE RECORD

(1) Generally

Access to information in a service provider's record under Part VIII refers generally to the right of the person who is the subject of the information or who is the recipient of the service to know the content of that information, if he or she requests. This right is subject to certain constraints, where, in the interests of the person who is the subject of the record or another person, the right to access should be limited.

(2) Persons Who Have a Right to Access **C.F.S.A. s.167**

The Child and Family Services Act gives the following persons a right to access information contained in a service provider's file:

a. the child 12 years of age or older has a right to access his own records without the consent of his parent; **C.F.S.A. s.167(1)(a)**

b. a parent has a right of access to his own record and to the records of any of his children under the age of 16 years, except the records created in connection with the provision of counselling to a child 12 years of age or older who has requested such counselling. **C.F.S.A. s.167(1)(b) & s.28**

c. a person with lawful custody or charge of a child under age 16 has a right of access to his own record and to the record of the child, except counselling records created in connection with the provision of counselling to a child 12 years of age or older who has requested such counselling. **C.F.S.A. s.167(1)(c) & s.28**

In this manner the Child and Family Services Act recognizes the higher level of maturity of the older child and the law's expectation that he have a greater involvement in decision-making that affects him. At the same time, the Act balances a child's increasing competence to participate in decisions involving his care against a parent or custodian's desirable and legally necessary involvement in such decision-making.

This provision is consistent with other provisions of the Act that accord greater rights to the 12 year old child, such as the right to counselling services, party status to agreements for temporary care, the right to be present in court and to initiate status reviews in a child protection court, and the right to initiate a review of a residential placement decision. To make the child's participation and utilization of these various rights meaningful, access to information contained in records is essential.

(3) Restrictions on a Person's Access

Counselling Records — **C.F.S.A. s.162(2)**

Consistent with the right given to a child aged 12 or over to consent to counselling services on his own behalf without parental involvement, the Child and Family Services Act requires the child's written consent to disclosure of any record created in connection with that counselling service.

Information Designated by a Parent — **C.F.S.A. s.167(3)**

Although the Child and Family Services Act gives a child over age 12 access to his own record, where a child's record contains sensitive personal information about the child's parents, both parents or either of them may require the service provider to withhold from the child between 12 and 16 years of age personal information which they have designated as information to be withheld from the child.

Potential Harm to Child Under 16 Years of Age — **C.F.S.A. s.168(1)**

Part VIII recognizes instances where a child's access to information or clinical conclusions contained in the service provider's record would not be in the child's best interests. The Act further recognizes that the maker of the record or the person controlling the record may be in the best position to evaluate the possible effects of disclosing such information to the child.

If the child is less than 16 years of age, access to part or all of the record may be refused where the service provider's opinion is that the sharing of the information with the child would cause the child physical or emotional harm. The basis for the service provider's decision should be documented. The child

is entitled to review of this decision by the Children's Services Review Board.

C.F.S.A. s.169

If the person is 16 years of age or more, he may not be refused access to his record.

Potential Harm to Third Party **C.F.S.A. s.168(2)(3)**

Service providers often gather information from persons other than the recipient of the service. Information of this nature may be based on inference, observation or belief. Where a service provider's opinion is that disclosure of the name of another person or information relating to that person is likely to result in physical or emotional harm to the informant, that person's name or information which may tend to identify that person may be withheld.

The service provider may also withhold the name of an individual who has provided information in the record but is not engaged in the provision of service to the subject of the record.

Assessment Reports **C.F.S.A. s.168(4)**

Service providers may also retain independent professionals or consultants to conduct medical, social, educational or psychological assessments to assist in the provision of service or treatment of the child or family. Such assessment reports may use language, information, conclusions or recommendations that require interpretation and explanation to the reader. In order to guard against potential harm through misinterpretation of the assessment reports, Part VIII permits the service provider to deny access to the assessment report itself. The service provider must, however, give the person requesting access the name of the assessor so that he/she may be approached directly for access to the report.

(4) Responding to a Request for Access to a Record

C.F.S.A. ss.167; 169(2)

It is the responsibility of the service provider within 30 days of receiving the request for access, to take one of the following actions:

a. give the person full access to the record;

b. give the person partial access, with notice that full access is refused for reasons stated in the notice;

c. deny access and notify the person accordingly, stating the reasons for the denial in the notice;

d. notify the person that the disclosure provisions of Part VIII do not apply to the record, if that is the case;

e. notify the person that the record does not exist, if that is the case.

Any notice of a refusal to allow access to a service provider's record must alert the inquirer of his right to request a review of the service provider's decision by the Children's Services Review Board.

(5) Access to be Noted on the Record **C.F.S.A. s.172**

The Act requires every disclosure and every correction to be noted on the record itself, except routine use of the record by a service provider and his employees or, where the service provider is the Minister or Ministry employees providing services.

10. CORRECTIONS OF ERRORS OR OMISSIONS IN THE RECORD

C.F.S.A. s.170

A person who is entitled to access to a service provider's record also has a right to have erroneous information or an omission with respect to relevant information corrected.

The service provider has a responsibility within 30 days of receiving any such request to take one of the following actions:

a. make the correction as requested, and give notice of the correction to every person to whom the service provider has disclosed the record;

b. notify the person that the service provider refuses to make the correction as requested, stating the reasons for the refusal, and note the request and response on the record;

c. notify the person that Part VIII of the Act does not apply to the record if that is the case;

d. notify the person that the record does not exist, if that is the case.

Any notice of a refusal to make a correction must also specify the person's right to request a review of the service provider's decision by the Children's Services Review Board.

APPENDICES

APPENDIX 1

INVESTIGATION UNDER THE OMBUDSMANS ACT R.S.0. 1980, c.325

(as amended)

A BRIEF NOTE

What the Ombudsman's Act Allows the Ombudsman to Investigate

The following criteria must be met:

- a decision or recommendation made or an act done or omitted in the course of the administration of a governmental organization (meaning a Ministry, commission, board, or other administrative unit of the Government of Ontario, including any agency thereof.

  Note: a Children's Aid Society does not fall within the definition of an Ontario government organization.

- such decision, recommendation, act or omission affects personally a person or body of person.

Excluded from Ombudsman Investigation Altogether

The remedies available under the Ombudsman Act cannot be invoked against:

1. judges or the functions of any court;

2. deliberation and proceedings of The Executive Council of the Ontario, the legislature or any of its committees;

3. a legal advisor or counsel to the Crown for any recommendations, act or omission in relation to a proceeding.

Ombudsman's Discretion to Refuse Investigation

The Ombudsman may refuse to investigate or continue an investigation in any of the following circustances:

1. where it appears to the Ombudsman that under the law or existing administrative practice there is an adequate remedy for the complainant, whether or not he has availed himself of it;

   or

2. where it appears to him that, having regard to all the circumstances of the case, any further investigation is unnecessary;

3. where the decision, recommendation, act or omission complained of has been within the complainant's knowledge for more than 12 months before the Ombudsman receives the complaint.

Appendix 1 (Cont'd)

4. where, in the Ombudsman's opinion,

   a) the subject matter of the complaint is trivial, or

   b) the complaint is frivolous or vexatious or is not made in good faith, or

   c) the complainant does not have a sufficient personal interest in the subject matter of the complaint.

Significant Restrictions on the Ombudsman's Investigation

Investigation by the Ombudsman must await the expiry of the time allowed by law for the exercise of any right to appeal or object to the decision complained of, or alternatively, the exercise of that right. This includes the complainant's exercise of any right to apply for a hearing or review of the decision.

The provisions of the Ombudsman Act thus operate in addition to the provisions of any other Act or rule of law providing a remedy or right of appeal or objection, or any procedure for inquiry into or investigation of a matter.

The Ombudsman Act requires legal remedies governing the decision complained of, to be utilized first.

Attempts by Statute to Prohibit Investigation Under the Ombudsman Act

Occasionally, provincial statutes contain provisions to the following effect:

1. a decision, recommendations, act or omission is final;

2. no appeal lies in respect of the decision, recommendation, act or omission;

3. no proceeding or decision of the person or body at issue shall be challenged, reviewed, quashed or called in question.

None of these provisions can oust the Ombudsman's right to investigate a complaint, where the proper criteria under the Ombudsman Act for such investigation are met.

Duty to Notify Governmental Organization

The Ombudsman Act requires the Ombudsman to inform the head of the governmental organization affected of his intention to make the investigation.

For rights that flow from that notification, and the procedure on investigation, see the full text of the Act.

Copies of the Ombudsman Act are available through the Ontario Government Bookstore.

APPENDIX 2

RULES OF THE PROVINCIAL COURT

(FAMILY DIVISION) OF ONTARIO

SECURE TREATMENT PROCEEDINGS

(R.R.O. 1980, Reg. 810 as amended by O. Regs. 808/84, 103/85 and 570/85)

Initiating the Application

Rule 58 (1) An application filed to commence a proceeding shall be in . . . Form 20D (committal to secure treatment or extension thereof).

(2) A notice of hearing shall be in Form 21.

Rule 3 The forms authorized by these rules shall be used where applicable and with such variations as the circumstances require.

Rule 66 In an application for an order . . . committing the child to secure treatment, the application and notice of hearing may be served without being issued by the clerk under the seal of the court if they are filed at or before the hearing required by . . . the Act.

Giving Notice of the Application

Rule 64(2) In a proceeding under Part VI (Secure Treatment), the application (Form 20D) and Notice of Hearing (Form 21) shall be served on

- the child
- any parent referred to in s.3(2) of the Act, and
- any other person having actual care and control of the child who is neither a foster parent nor a service provider as defined in subsection 3(1) of the Act.

Consents

Rule 58 (5) A consent to secure treatment (general) shall be in Form 20E.

Appendix 2 (Cont'd)

Rule 13 (1) . . . service of a document in a proceeding may be made in or out of Ontario,

(a) by leaving a copy of the document with the person to be served;

(b) by leaving a copy of the document with a person apparently sixteen years of age or over at the place where the person to be served is residing.

(c) by sending a copy of the document together with a prepaid return postcard in Form 1 by ordinary mail in an envelope, bearing the return address of the sender and addressed to the person to be served, but service under this clause is not valid unless the return postcard signed by the person to be served is received by the clerk;

(d) by leaving a copy of the document at the address for service shown on the latest document filed by the person to be served in the same or any other proceeding in the court;

(e) by sending a copy of the document by ordinary mail addressed to the person to be served at the person's address for service shown on the latest document filed by the person in the same or any other proceeding in the court; or

(f) by delivering or sending by ordinary mail a copy of the document to the person acting in the proceeding for the person to be served.

(2) In addition to the methods set out in subrule (1), service of a document in a proceeding under The Child and Family Services Act on a . . . children's aid society may be made by sending a copy of the document by ordinary mail addressed to the person to be served at his place of business . . .

(7) Where a copy of a document has been mailed, it shall be deemed to have been served on the fifth day following the day on which it was mailed, unless the contrary is shown.

(8) Notwithstanding that a document in a proceeding has been served under subrule (1) or (2), the court at any time may order that the document be served by leaving a copy of the document with the person to be served.

(9) Proof of service or of efforts to make service may be given by affidavit, in the absence of an admission of service. (See Form 24)

Appendix 2 (Cont'd)

Inability to Give Notice of the Application

Rule 14 (1) Where on motion without notice the court is satisfied that reasonable efforts have been made, without success, to serve a document or that such reasonable efforts would not be successful, the court may order substituted service of the document in such manner as the court directs or may dispense with service upon such terms as the court considers proper in the circumstances.

Approach to the Rules of the Court

Rule 4 These rules shall be construed liberally so as to secure an inexpensive and expeditious conclusion of every proceeding consistent with a just determination of the proceeding.

Rule 5 In any matter not provided for by these rules, the practice of the court shall be regulated by analogy to these rules and to the Act governing the proceeding and the court on motion without notice may give directions.

Rule 6 Where a party fails to comply with these rules, the court, upon such terms as the court considers proper, may grant such relief from the non-compliance as the court considers necessary to secure the just determination of the matter in dispute.

Orders

Rule 70 The order issued from the court (Form 34) must be served on the persons who were served with the application, or as directed by the court.

Rule 70 The court shall not make a (secure treatment) order on consent of the parties, unless the parties agree on the facts on which the order is based and a hearing is held.

Rule 73 (4) An order for secure treatment shall be served on the persons who were served with application or as directed by the court.

APPENDIX 3

INTERPRETATIVE GUIDE ON THE RESTRICTION ON LOCKING

A. INTRODUCTION

Throughout the process of developing and implementing the Child and Family Services Act, several legitimate questions have been posed related to the interpretation of Section 96 of the Act concerning the locking up of children. These questions have originated from a variety of sources including both Ministry staff and service providers, and have been posed through regional CFSA representatives, training sessions and various meetings concerning the subject.

This document brings together information from earlier training materials as well as additional information in response to questions to serve as an interpretative base for all concerned. This document will also serve as a guide to service providers in their task of developing policies and procedures which will assure that children's rights are not jeopardized and that the balance between the rights and safety of the child is achieved.

B. THE REASON FOR SECTION 96

Sub-section 96(1) of the Act clearly states that:

> "no service provider shall detain a child or permit a child to be detained in locked premises in the course of the provision of a service to the child except as Part IV (Y.O.A. Programs) and Part VI (Secure Treatment and Secure Isolation Programs) of the Act authorize";

and further states (s.96(2)) that:

> "subsection (1) does not prohibit the routine locking of premises for security at night."

A decision to detain a child in locked premises is a serious one. It should be made on the basis of clear criteria and should be subject to procedural safeguards that protect the rights and interests of all concerned.

The C.F.S.A. therefore allows for detention by locking only in certain carefully circumscribed situations. These include secure isolation, secure treatment, secure custody and secure temporary detention. In all of these situations, specific criteria must be met and the decision-making process must follow certain rules or procedures intended to ensure fairness.

In most situations, the provision of an effective service provides for the protection and security of the child by means of programming and staffing, and based on mutual consent through the involvement of the child in decisions about the placement. The Act provides for procedures when the child objects to the placement and for mechanisms to deal with complaints. Subsection 2(2) represents this approach with reference to the "duties of service providers".

The Act also contains principles to guide those responsible for decisions under the Act and to help everyone understand the spirit and intent of the Act. The first principle and paramount objective of the Act is the promotion of the best interests,

protection and well-being of children. This is the law's continuing acknowledgement that children are vulnerable because of their developmental immaturity, and thus require protection. Subsection 1(d)(ii) of the Act clearly states that the purpose of the new legislation is "to recognize that children's services should be provided in a manner that takes into account physical and mental developmental differences among children".

Whether children are living with their parents or with others (in care), they have the right to expect that their safety will be ensured. While in either situation the parents have the moral and legal responsibility to protect the child's interests and rights, the children in care are unique in that they may have limited access to their parents. This causes the role of the service provider as protector to take more significance. This in turn places appropriate emphasis on the importance and significance of another objective of the Act, which is one of following the least restrictive or disruptive course of action that is available and appropriate.

All of which, of course, must take place within the prohibition on detaining children by locking.

C. EXPLANATION OF TERMS

From the many questions that have been put forth, it is apparent that consistent interpretation of section 96 of the legislation and its appropriate application to a variety of situations is important and required across all services and programs. The process of interpretation focuses on the key facts and terminology of section 96.

These terms are discussed and presented here in the order in which they appear in the particular section of the legislation.

1. **Service Provider:** The Act defines the term to mean any or all of the following: the Minister; all ministry operated services; an agency approved to provide services under Part I (Flexible Services); a children's aid society; a person or corporation licensed under Part IX (Licensing); persons providing service through a purchase of services agreement contracted with the Minister or with an approved agency; and persons providing services or consultation, research or evaluation and funded by a grant under Part I (Flexible Services).

2. **Detain:** To restrict movement and to limit freedom of access to an outside area, thus preventing a person from leaving the premises.

3. **Child:** Any person under the age of eighteen years.

4. **Locked:** A condition whereby all reasonable means of leaving the premises (e.g. doors, gates, etc.) are fastened in a way such that they cannot be opened by those children within the premises. (Therefore if one or more of the reasonable means for leaving the premises is not fastened, the premises cannot be considered as locked.)

5. **Premise:** A house, building, and part of a house or building, with its grounds. Any doors, fences, gates, etc. are considered to be part of the premise. To determine whether a child is detained, all components of a premise should be taken into consideration.

6. **Service:** The specific reference in subsection 96(1) addresses all services available to children under the Child and Family Services Act. Specifically these are categorized as child development, child treatment, child welfare, community support, and young offenders, and the various functions under each service.

7. **Part IV of CFSA:** This part of the Act addresses Young Offender programs. Of those described, only places of secure custody and places of secure temporary detention may be locked for the detention of children.

8. **Part VI of CFSA:** This part of the Act deals with Extraordinary Measures. Within this part, reference is made to Secure Treatment programs and programs using Secure Isolation rooms which may use locking within specified parameters for the purpose of detaining children who satisfy the eligibililty criteria.

9. **Security:** A condition whereby the safety of the premises and those people residing in the premises is guaranteed against intrusion by and from outside sources.

10. **Night:** The specific period may be determined differently by various individual settings depending on such factors as client age, geographical location, nature of the program and service, level and schedule of activity, and utilization of the premises.

D. QUESTIONS AND ANSWERS

As previously stated, specific questions have been posed throughout the process in direct reference to the locking of children. Although the answering of these and other questions should be facilitated by the preceding information, samples of these questions and answers are presented here for further clarification and assistance.

Question #1: **What is the purpose of "security" as referenced in subsection 96(2) of the Act?**

Answer: The purpose of security is to ensure that the premises and the people residing within the premises are safe from and guarded against intrusion from outside interference.

Question #2: **What is "routine locking" as referenced in subsection 96(2) of the Act?**

Answer: This is locking which is habitually done as part of a regular procedure for the purpose of security (see Question #1). In specific reference to the Act, it is allowed only at night.

Question #3: **What are "locked premises" as referenced in subsection 96(1) of the Act? Does this mean internal doors, external doors, and/or perimeter fences and gates?**

Answer: Premises refers to a house or building and any part of either with its grounds and includes internal and external doors as well as fences and gates. Locked premises are ones in which all of the

Appendix 3 (Cont'd)

avenues of egress are fastened in such a way which prevents the inhabitants from leaving. The emphasis here is on the fact that all components of the premises (i.e. units, building, grounds) must be considered.

Question #4: **Do all egresses have to be unlocked or only one?**

Answer: No, all egresses do not have to be unlocked. But the actual number and location will depend on the specific premises and what needs to be done to ensure that a "locked" condition resulting in a child detention, does not exist. This also assumes compliance with all fire and safety regulations, and insurance coverage requirements.

Question #5: **What is a "lock"? Does this include such things as latches, combination locks, staff holding doors, gates, etc.?**

Answer: A lock is any device which fastens an avenue or means of egress in such a way that a child cannot open it and leave the premise.

Question #6: **Can locking be used to prevent a client from gaining access to areas of danger (e.g. supply rooms, furnace rooms, environmental hazards, etc.)?**

Answer: Yes. The prohibition on locking is only in reference to the detention of children.

Question #7: **What services and settings are included in the reference to a "provision of a service" found in subsection 96(1) of the Act?**

Answer: All services and settings defined and covered by the Child and Family Services Act with the previously stated exceptions (see definitions).

Question #8: **Does the section on locking mean that when a child wants to leave the premises, the service provider must let him/her do so?**

Answer: The section on locking states only that a service provider cannot detain or permit a child to be detained in a locked premise. Decisions related to a child leaving the premises are based on common sense and good parenting practices and are affected by several factors such as "house rules", the child's reasons for leaving, the child's need for supervision, availability of supervision, environmental considerations, etc.

Question #9: **Can a service provider lock a premise for security purposes during the daytime?**

Answer: Premises can be locked for security reasons (see definition of security) at any time as long as the locking is not done for the purpose of or does not result in the detaining of a child.